

Exhibit D

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9
Debtors.
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14 VIDEOTAPED DEPOSITION OF DAVID JAMES COLES

15 New York, New York

16 February 4, 2010
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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 27495

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D. Coles

* * *

DAVID JAMES COLES, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. THOMAS:

Q. Mr. Coles, would you please state your full name and address for the record?

A. David James Coles. 21 East 66th Street, New York, New York, 10065.

Q. Have you been deposed before?

A. Yes.

Q. Approximately how many times?

A. Two.

Q. And if at any point you're not sure of my question or you'd like to ask me to clarify it or rephrase it, please ask me to do so; I'll be happy to.

A. Will do.

Q. Would you please give you a brief general description of your educational background.

A. Sure. I'm a UK chartered accountant,

D. Coles

I have a degree in economics, and I started my career with Arthur Andersen in the UK. I spent about four years in the audit practice before moving across into corporate recovery, whereby we performed a lot of investigations on behalf of secured lenders, ran a few companies in receivership, and then had the opportunity towards the end of my sixth year with Andersen in the UK to move across to the U.S.

I moved to Andersen's New York office and was there for about two years doing turnaround-type work, and then at the end of that two years, I started work with Alvarez & Marsal, who were CRO on an assignment and we were providing the support to the CRO, and then for the next two years, I was largely working with A&M but still an employee of Andersen.

So, at the end of those two years, I had gotten my green card, felt comfortable about leaving Andersen, and switched across to A&M. And at that time, A&M was less than 20 people and today is 1700 people. So that would be 13 years ago, and I've been a managing director since 2000.

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D. Coles

Q. And the last few years at A&M, how would you describe your duties and responsibilities?

A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs.

Q. And for the non-accountants, can you describe generally what turnarounds are?

A. Yes. Turnarounds is where there might be a salvageable business and you're attempting to improve the operations, perhaps refinance it, and usually doesn't involve a bankruptcy, and then a liquidation probably does involve a bankruptcy and there's no go-forward enterprise.

Q. And what is your current position today?

A. I am Chief Restructuring Officer at Finlay Enterprises, Inc., which at one point was a billion-dollar jewelry retailer, and it ran the jewelry concessions within a number of department store chains. And then in the late 2000s, it -- it diversified into specialty stores, and we weren't able to salvage a

D. Coles

go-forward business out of that either and so it liquidated through this past holiday selling season.

Q. Are you still a managing director of Alvarez?

A. Yes.

Q. So when you take these positions with a turnaround company, you retain your position with Alvarez and take on a title or position with the company?

A. Yes, the -- the engagement letters are always with Alvarez and it's Alvarez supplying personnel.

Q. When did you move over to Finlay?

A. Finlay commenced in mid-February 2009.

Q. When did you first have any interaction with Lehman?

A. September 16, 2008.

Q. When you switched to Finlay in February of '09, did that kind of end your involvement with Lehman?

A. Substantively, yes. I remained a director and might still be a director of some very obtuse foreign subsidiaries. We've been

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1 D. Coles
2 slowly moving me off those slates, but it's a
3 very complex org. chart so I may still be
4 hanging out there on a few subs.
5 Q. On or about September 26, 2008, were
6 you appointed CFO of Lehman at the time?
7 A. I can't remember the exact date. That
8 would sound about right.
9 Q. CFO, comptroller and co-treasurer?
10 A. I think that's right, too.
11 Q. Do you still hold any of those titles?
12 A. No.
13 Q. And approximately how long did you
14 function as CFO for LBHI?
15 A. Through probably mid-February of 2009.
16 Q. And in a turnaround environment like
17 this, what does the CFO, comptroller and
18 co-treasurer do?
19 A. Well, this one I think early on we
20 realized it wasn't -- it wasn't a turnaround.
21 It was a controlled wind-down liquidation. It
22 was -- job number 1 really was trying to control
23 cash and get a sense for liquidity. It was
24 trying to support each of the separate business
25 units, and it was taking stock of the assets and

1 D. Coles
2 the balance sheets of all of the entities that
3 we now found ourselves responsible for.
4 So this was the residual estate
5 following the sale to BarCap and also subsequent
6 to the other administrations going on in the
7 world, in Asia and in Europe.
8 Q. Was part of that effort or process of
9 taking stock, did it involve an assessment of
10 what assets and liabilities had gone over to
11 Barclays as part of the transaction and what had
12 stayed with Lehman?
13 A. Yes.
14 Q. Let me go ahead and show you a
15 document that we'll mark as 583A.
16 (Exhibit 583A, an e-mail chain from M.
17 Kelly to J. Stiklorius dated September 18,
18 2008, marked for identification, as of this
19 date.)
20 Q. And this is an e-mail chain that I
21 don't see your name on, but you're referred to
22 in it. Do you know who Jonas Stiklorius is?
23 A. I do.
24 Q. Did I get that pronunciation right?
25 A. Good enough.

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1 D. Coles
2 Q. He's someone that worked with you at
3 Alvarez?
4 A. Yes, he worked directly for me,
5 actually, in the early days there.
6 Q. This is an e-mail, the second-in-time
7 e-mail -- excuse me, the first-in-time e-mail
8 from him to Kelly Martin says, "I'd like to
9 inquire about your availability to meet with
10 David Coles, Jim Fogarty, and myself for about
11 an hour to review the balance sheet and, in
12 particular, the anticipated post-transaction
13 balances."
14 Is that -- the post-transaction
15 balances, does that refer to the effort to make
16 sure you had taken stock of the assets and
17 liabilities that went over to Barclays and the
18 ones that stayed behind that you would be
19 responsible for?
20 A. Yes.
21 Q. Did you in fact meet on or about
22 September 28 with -- September 18, excuse me,
23 2008, with Kelly Martin?
24 A. I can't recall. Actually, it's Martin
25 Kelly.

1 D. Coles
2 Q. Martin Kelly. Thank you.
3 Do you recall whether you had any
4 meetings with him that first week of the Lehman
5 bankruptcy?
6 A. I can't recall that it was the first
7 week. I do remember a couple of meetings that
8 Martin attended, and we did attempt to go
9 through a trial balance that he was compiling.
10 Q. Would that have been sometime between
11 the filing of bankruptcy around the 15th of
12 September and before the closing of the Barclays
13 transaction on the 22nd of September?
14 A. Probably -- I'm not sure. It
15 certainly was in those first two weeks
16 post-filing.
17 Q. Okay. Here there's a reference by Mr.
18 Kelly to making this meeting happen today,
19 September 18. Do you know one way or the other
20 whether it happened on that day?
21 A. I don't.
22 Q. Okay. Let me show you another
23 document we'll mark as 584A.
24 (Exhibit 584A, e-mail chain from M.
25 Kelly to D. Coles and K. Wong, dated

1 D. Coles
2 September 19, 2008, with attachment, marked
3 for identification, as of this date.)

4 Q. And I'll note for the record this
5 appears to be the same or a very similar exhibit
6 as to Exhibit 470A, but it has -- it's a little
7 clearer printout of the attachment, which is why
8 I'm using it.

9 MR. TAMBE: I'll also note it doesn't
10 have any Bates number on it.

11 MR. THOMAS: Okay.

12 Q. Do you recognize this e-mail chain
13 involving you dated September 18 and 19 of 2008?

14 A. I don't.

15 Q. The -- do you have any reason to doubt
16 that this was an e-mail chain that you
17 participated in?

18 A. No.

19 Q. The e-mail that appears to be from you
20 on September 18 to Kristy Wong, and do you
21 recall who Kristy Wong is?

22 A. Yes.

23 Q. Who is that?

24 A. She worked under Martin Kelly, so was
25 perhaps an accounting manager because I think

1 D. Coles

2 Martin Kelly was comptroller.

3 Q. Okay. In what appears to be your
4 e-mail, you write, "Some colleagues and I met
5 with Martin Kelly on Tuesday" -- and I guess as
6 an initial matter, that Tuesday would be
7 September 16 -- "on Tuesday and discussed the
8 consolidated balance sheet and the likely
9 post-BarCap sale BS." Do you see that?

10 A. Yes.

11 Q. Does that refresh your recollection as
12 to the timeframe in which you would have met
13 with Mr. Kelly?

14 A. Yes.

15 Q. Okay. So that would have been on
16 approximately September 16, 2008?

17 A. Yes.

18 Q. Okay. And the reference to the
19 "likely post-BarCap sale BS," can you just break
20 that out, what you mean?

21 A. Yes. So there would have been a
22 consolidated balance sheet at the time of the
23 sale, and what we were looking to get from
24 Martin and Kristy was a breakout of what assets
25 and liabilities had been sold or assumed by

1 D. Coles
2 BarCap pursuant to that sale and what was left
3 with the residual estate that we, as -- as
4 LBHI's new executive office group, had
5 responsibility for.

6 Q. And we can take a look at some later
7 documents back and forth between Alvarez and
8 Weil Gotshal, but did you ever meet with Weil
9 Gotshal at any point?

10 A. Yes.

11 Q. In this -- this preclosing period, do
12 you know if you had discussions with them?

13 A. I don't recall. I don't recall if it
14 was that first week or whether most of our
15 impetus was trying to reach company people
16 rather than debtors' counsel.

17 Q. But at some point you had discussions
18 with Weil Gotshal about the terms of the sale
19 transaction and what was conveyed and what
20 wasn't?

21 A. Yes.

22 Q. You're asking here for, "Do you have a
23 concurrent consolidating BS file by entity that
24 you could send or grant us access," and then
25 Martin Kelly writes back to you and says,

1 D. Coles

2 "David, please see latest draft attached."

3 A. Yes.

4 Q. Is this the type of information you
5 were asking for in your e-mail?

6 A. It was getting there. It's not quite
7 what I was requesting, because "consolidating"
8 would tend to have all of the subsidiaries and
9 have each of those laid down as a column, and
10 this is a consolidated balance sheet from what I
11 can tell.

12 Q. I see. And do you know whether some
13 of the -- strike that. We'll come back to it.

14 If you would look, please, at the
15 second page of the attachment under "Payables"
16 about a third of the way down. Do you see that?

17 A. Yes.

18 Q. Do you see "Bonus Payable," "Cure
19 Amounts," "Accounts Payable," do you see those
20 lines?

21 A. Yes.

22 Q. And following those lines over, do you
23 see that there's a -- listed as a \$2 billion
24 transaction adjustment across from the "Bonus
25 Payable" amount?

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<p>1 D. Coles</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any understanding as to</p> <p>4 the reason for that transaction adjustment?</p> <p>5 A. Yes. I may not have before getting</p> <p>6 this, this sheet, but the -- it was my</p> <p>7 understanding that the transaction with BarCap</p> <p>8 had a feature in it whereby BarCap assumed a</p> <p>9 bonus pool for the employees it offered</p> <p>10 positions to and, in addition, it sought to have</p> <p>11 the estate assume and assign a vast quantity of</p> <p>12 executory contracts and that this was an</p> <p>13 estimate of the cure amounts necessary to be</p> <p>14 able to effect that.</p> <p>15 Q. That's for the second line?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what was the basis -- let's</p> <p>18 break it down. On the compensation, first of</p> <p>19 all, did you ever read the Asset Purchase</p> <p>20 Agreement or the Final Purchase Agreement as</p> <p>21 amended by the Clarification Letter?</p> <p>22 A. I may have had a copy. I don't now</p> <p>23 recall whether I read it page-for-page or simply</p> <p>24 got like an executive summary of it. A</p> <p>25 colleague of mine, Jim Fogarty, was more on</p>	<p>1 D. Coles</p> <p>2 point on the transaction in those first few</p> <p>3 weeks.</p> <p>4 Q. Okay. Do you know if the accrual</p> <p>5 amounts with respect to compensation also</p> <p>6 included severance, potential severance</p> <p>7 liability that Barclays was assuming as part of</p> <p>8 the purchase agreement?</p> <p>9 A. I don't recall.</p> <p>10 Q. What was the -- for whatever</p> <p>11 understanding you had with respect to the</p> <p>12 compensation, the transaction adjustment here,</p> <p>13 what was the basis for that understanding?</p> <p>14 A. To the extent that the purchaser,</p> <p>15 BarCap, was assuming a liability that would</p> <p>16 otherwise have been paid by LBI, then it was</p> <p>17 taking credit for the assumption of those</p> <p>18 liabilities in arriving at its net purchase</p> <p>19 consideration.</p> <p>20 Q. Who told you that?</p> <p>21 A. I think I gathered that from my read</p> <p>22 of the purchase agreement.</p> <p>23 Q. Okay. Anything else that would have</p> <p>24 fed into that understanding?</p> <p>25 A. No.</p>
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<p>1 D. Coles</p> <p>2 Q. Okay.</p> <p>3 A. Conversations with colleagues.</p> <p>4 Q. Now, if it was -- if there was a</p> <p>5 transaction adjustment raising it that amount,</p> <p>6 is that really assuming a liability that Lehman</p> <p>7 would have otherwise had to incur, as you put</p> <p>8 it?</p> <p>9 MR. TAMBE: Objection to the form of</p> <p>10 the question.</p> <p>11 You can answer.</p> <p>12 A. I think these were both estimates. It</p> <p>13 would have been -- it could have been quite</p> <p>14 difficult as early as September 17 to have had</p> <p>15 really solid numbers for both of these</p> <p>16 categories, and on the cure payments in</p> <p>17 particular, I did do some follow-up work with a</p> <p>18 group within Lehman that I think did move across</p> <p>19 to Barclays that wasn't part of the estate but</p> <p>20 that tended to deal with all of the back office</p> <p>21 servicing, and there was an individual there</p> <p>22 whose name I don't now remember, but he was</p> <p>23 tasked with creating an enormous database of all</p> <p>24 these executory contracts.</p> <p>25 And I know from having dealt with a</p>	<p>1 D. Coles</p> <p>2 number of bankrupt entities over the years that</p> <p>3 that is required work to be done, but it's never</p> <p>4 easy, and with an organization as complex as</p> <p>5 Lehman, that was going to be very difficult. So</p> <p>6 he and his group spent a lot of time scanning</p> <p>7 documents, figuring out what kind of cure was</p> <p>8 necessary for somebody else, a subsequent</p> <p>9 purchaser, BarCap, to assume and to have the</p> <p>10 estate assume and assign those across to the</p> <p>11 purchaser, and so I got a sense over the weeks</p> <p>12 that followed and the months that followed</p> <p>13 whether that number was a realistic number.</p> <p>14 Q. And was it your understanding whether</p> <p>15 the number that was being calculated as an</p> <p>16 estimate, as an estimate of what Barclays</p> <p>17 actually would assume in terms of cure based</p> <p>18 upon their election, assume certain some unknown</p> <p>19 universe of contracts, or was it an estimate of</p> <p>20 potential exposure, meaning that Barclays could</p> <p>21 incur up to that amount if they, you know,</p> <p>22 assumed all the contracts?</p> <p>23 MR. TAMBE: Objection to the form of</p> <p>24 the question.</p> <p>25 A. I'm not exactly clear. It -- what I</p>

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<p>1 D. Coles</p> <p>2 typically have seen, and which what I would have</p> <p>3 assumed here, is that the number is the maximum</p> <p>4 exposure and then you typically see a purchaser</p> <p>5 use its existing business relationships with</p> <p>6 vendors to negotiate lesser amounts.</p> <p>7 Q. Is it your understanding in this</p> <p>8 transaction that Barclays had the discretion to</p> <p>9 pick and choose which contracts it was going to</p> <p>10 assume?</p> <p>11 MR. TAMBE: Objection to form.</p> <p>12 A. I think that is the case, yes.</p> <p>13 Q. So it wasn't agreeing to assume any</p> <p>14 particular liability amount; rather, it was just</p> <p>15 agreeing to assume cure amounts for whatever</p> <p>16 contracts it assumed?</p> <p>17 A. That I'm not actually clear.</p> <p>18 Q. Okay. In any event, just to go in a</p> <p>19 little more detail about the work with the</p> <p>20 group, so you would have gotten this at least --</p> <p>21 at least as of September 18, 2008.</p> <p>22 Do you recall whether you noted the</p> <p>23 transaction adjustments at or about, you know,</p> <p>24 at that time?</p> <p>25 A. I think it might have come on the</p>	<p>1 D. Coles</p> <p>2 19th.</p> <p>3 Q. Oh, you're right.</p> <p>4 A. Yes.</p> <p>5 Q. Yes. Okay, so on the 19th. Do you</p> <p>6 recall when you got this, did that kind of stand</p> <p>7 out to you and you see the large transaction</p> <p>8 adjustments?</p> <p>9 A. It wasn't the largest number on there.</p> <p>10 In those early days of being on the case, our</p> <p>11 whole -- I think my whole team struggled with a</p> <p>12 renewed -- sorry, a new level of materiality</p> <p>13 that had to come into play here because we were</p> <p>14 dealing with billions and almost trillions of</p> <p>15 dollars.</p> <p>16 So I -- I think I would have noted</p> <p>17 that column. I would have been perhaps more</p> <p>18 interested in the liquidity situation to make</p> <p>19 sure that those assets that were very liquid</p> <p>20 were under my control, secure, and that I was</p> <p>21 being a custodian, a good custodian of those.</p> <p>22 Q. In terms of the -- let's take the</p> <p>23 "Cure Payments," "Accounts Payable" line and</p> <p>24 then "Transaction Adjustment." Can you just</p> <p>25 kind of walk through? I understand that you</p>
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<p>1 D. Coles</p> <p>2 would have had other issues too, but what you</p> <p>3 would have -- what you did do that you recall in</p> <p>4 terms of investigating those or understanding</p> <p>5 more about the transaction adjustments?</p> <p>6 A. Sure. On the cure payment side, I had</p> <p>7 earlier talked about an individual at Lehman,</p> <p>8 and I think he had gone across to BarCap and he</p> <p>9 was in Office Services. And he was tasked with</p> <p>10 creating this very substantial database of all</p> <p>11 of these contracts, and there was a process by</p> <p>12 which vendors, I remember one -- a motion</p> <p>13 perhaps that was filed or a procedure for the</p> <p>14 assumption and assignment of these contracts</p> <p>15 where the vendors for these agreements would</p> <p>16 have an ability to look online, check their</p> <p>17 contract, check what was there for their</p> <p>18 estimated cure, and then there was a procedure</p> <p>19 by which, if they were comfortable, they could</p> <p>20 accept the assumption and assignment across to</p> <p>21 Barclays.</p> <p>22 Q. Is that the Epiq Website?</p> <p>23 A. I think Epiq did host it, yes. It's</p> <p>24 the kind of thing that Epiq does. I'm not</p> <p>25 actually sure whether Epiq did that. Lehman may</p>	<p>1 D. Coles</p> <p>2 well have had the technology available to do</p> <p>3 that.</p> <p>4 Q. So your understanding of this, this</p> <p>5 transaction adjustment figure here that you</p> <p>6 called 1645, that -- so somebody at this point</p> <p>7 would have already -- someone in Office Services</p> <p>8 would have already tried to compile all those</p> <p>9 contracts and come up with a number?</p> <p>10 MR. TAMBE: Objection to the form of</p> <p>11 the question.</p> <p>12 A. Not exactly sure how that number was</p> <p>13 arrived at specifically. I know that the tasks</p> <p>14 that that group were undertaking, I did mention</p> <p>15 that it's usually a Heracleian task for an</p> <p>16 organization to reach out across its</p> <p>17 subsidiaries, get a copy of every executory</p> <p>18 contract, and then attempt to figure out how</p> <p>19 much would be -- would need to be paid to cure</p> <p>20 it.</p> <p>21 If this came out on -- came to me</p> <p>22 probably on the 19th, so it might have been done</p> <p>23 on the 18th, that was pretty spectacular to get</p> <p>24 that close to a real number for what must have</p> <p>25 been thousands of executory contracts.</p>

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Q. So that's not a number that would just be in existence on a firm system --

A. No.

Q. -- that you could pull up? It involves a lot of work?

A. I've never seen it maintained that way.

Q. Have you seen, had experience with those estimates ending up being off by a wide margin?

A. Yes, both -- both on the trying to identify the pool and then by what ultimately a purchaser might be able to negotiate to -- to get these contracts assumed and assigned over.

Q. Is that, based on your experience in the business, is it understood that these are fairly, you know, rough estimates and difficult estimates to come up with?

MR. TAMBE: Objection to the form of the question.

A. It's easier to know the -- it's difficult to work out the total potential exposure, but it's possible, and then from that total exposure, it's typical for the actual

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liability that is settled by the purchaser to be markedly lower than that.

Q. And is that a -- part of the function of it being the actual amount being marketed lower, the purchaser electing not to take on all those contracts?

A. That could be a part of it.

Q. And did you go -- do you recall going in like meeting with the person at Office Services or people at Offices Services that worked on this?

A. Yes. Remember, he and his group were in a -- a different building, so I met him and his immediate boss on-site, and then I think I also met him over in the location where we were housed.

Actually, I've just remembered his name. Terry Berman.

Q. And so you're getting this on -- on looks like the 19th, and you may not remember the exact timeline or date, but just kind of order of magnitude, you would have gotten this the 19th. When do you think you would have kind of gone over and met with these folks to get a

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sense of how this was calculated?

A. Probably within seven days of receiving this.

Q. So, okay, it could have been any time in roughly that seven-day period?

A. Yes.

Q. And then what else did you do? When you went over there, you met with them, you understood how they were trying to come up with the number?

A. Yes.

Q. Did you -- did you have any follow-up after that with them?

A. Yes. And this group was also a group that I seem to recall we were very dependent on to -- to run our back office as the estate, because so many of the systems and processes went across with BarCap that we, the residual estate, needed a Transitional Services Agreement back with BarCap for BarCap to provide us with things that we were used to having and which were essential.

So my discussions with Terry and people who work with Terry would have been in

D. Coles

connection with this cure payment amount generally, but also the process and also the process of providing the residual estate with transitional services.

His group, for instance, would have managed -- or, within that group in that building, they managed the whole T & E reimbursement. So that's travel and entertainment. And we needed to continue to operate systems as they had operated before and keep employees in place to manage down the assets, so it was important that we had a process by which we could determine who was an employee of the estate, who was an employee of now of BarCap, and how we were going to settle out people's T & E, for instance.

Q. And when you got that sense of understanding of how they had calculated this transaction adjustment for cure amounts, was -- did -- did it seem like they had undergone a reasonable process in trying to come up with that amount to you, or did you have any further questions or --

MR. TAMBE: Objection to the form of

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the question.

A. I don't think I was in a position to know how thorough that was. I do remember reflecting on the enormity of the task. I don't now remember how many contracts that comprised, but it -- I mean, Lehman was the biggest thing that I think anybody had seen at that point in terms of a company going through a bankruptcy at such short notice with such little planning.

Q. And would that be a short amount of time, a couple of days to come up with the type of estimate?

A. I don't think so. I mean, this -- this was presumably the -- the best they could come up with in two days. It can take a lot longer than that.

Q. I guess what I was asking, compared to other situations, was --

A. Yes.

Q. -- having just a couple days to come up with these estimates a shorter period of time than you've seen in other situations?

A. That was very short.

Q. And so they explained what they had

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done, and then was there -- did you have any follow-up beyond that in terms of any further occasion to look in precisely how they had done the estimate in more details?

MR. TAMBE: Objection to the form of the question.

A. I don't think -- I don't think -- I myself didn't further explore the original estimate, but we did check in from time to time on how much had actually been incurred to assume and assign contracts, and I remember that number being very low relative to 1645. I seem to recall it being around 300 million around the time that I left, which would have been in mid-February.

Q. Did that -- and I guess the -- there are two buckets of contracts Barclays would be assuming. One was the Closing Date Contracts, which were actually listed prior to closing and were being assumed upon closing, and then another bucket that they had 60 days to decide on whether to assume or not assume. Is that consistent with your recollection?

A. That rings a bell.

D. Coles

Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar?

A. Well, they would have still been --

MR. TAMBE: Objection to the form of the question.

You can answer.

A. I think they would have still been estimates that were probably subject to a fair amount of negotiation with the -- with the vendor to determine whether that number was in fact -- that estimate was accurate and whether settling that amount would actually get the job done in the contract to assumed and assigned.

Q. Were you surprised by how much lower the actual amount of cure assumed by Barclays was --

A. Yes.

Q. -- compared to the estimate?

And did that surprise cause you to take any further action or look into anything else?

A. It -- I think this is all -- this was

D. Coles

all post-BAPCA, where you have 90 days -- sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the estate cure it and have it assigned across to them.

So I, knowing that there was 210 days in there, I may not have fully understood quite what the 60-day batch of contracts was and how that fit into the 210 days, but I would have known from a legal perspective that they really had seven months to figure out whether to assume or assign and cure and, hence, we wouldn't know until the end of seven months what the real number was.

Q. I'm sorry, you had -- Barclays had, even though the contract says Barclays has 60 days, to decide whether to assume or have Lehman assume and assign?

A. I guess the 60 days would have been a term in the agreement between Lehman and Barclays, but the bankruptcy code allows a debtor 210 days to assume or assign. Now, I'm

1 D. Coles
2 not a lawyer, so I'm not exactly sure how those
3 two competing timeframes might interplay with
4 each other.

5 Q. Do you recall that the, at or about
6 the time of closing, the amount of Closing Date
7 Contracts was first identified as approximately
8 180 million and then a revised version was filed
9 a little later that said 106 million,
10 approximately?

11 A. I don't remember those numbers. And I
12 actually don't think that that was in my work
13 stream area. I think that was Jim Fogarty.

14 Q. Okay. The, other than -- is it Mr.
15 Berman?

16 A. Yes.

17 Q. Did you speak with anyone else
18 involved in this work effort?

19 A. There was someone in that same
20 building where Terry worked who worked under
21 Terry. I don't remember his name, but he
22 ultimately was let go by BarCap and the estate
23 picked him up.

24 Q. Okay.

25 A. And there was an individual that ran

1 D. Coles
2 the T & E reimbursement area, and I don't now
3 remember his name.

4 Q. And did you -- you discuss with each
5 of them how they kind of went about coming up
6 with this, the estimate for the transaction
7 adjustment for cure?

8 MR. TAMBE: Objection to the form of
9 the question.

10 A. I don't think I actually ever asked
11 that question, but I -- I would have assumed
12 that, and I did assume at the time, that they
13 knew what contracts Lehman was -- had signed and
14 was responsible for and that they had analyzed
15 that universe of contracts and attempted to
16 figure out what, if anything, was owed under
17 them.

18 Q. And I had understood that that was
19 your understanding for what they had done to
20 come up with this number. I'm just wondering,
21 was that understanding based on discussions with
22 them or reviewing some written work they had
23 done, or what was that based on?

24 MR. TAMBE: Objection to the form of
25 the question.

1 D. Coles
2 A. Discussions with them.
3 Q. Okay.
4 A. I don't remember seeing the enormity
5 of this other listing, which I'm sure this
6 represented, because I think this was being done
7 online perhaps by Epiq, and it involved a lot of
8 scanning of contracts. And then someone, be it
9 Epiq or Lehman/BarCap, was trying to estimate
10 what would have needed to be paid to cure these
11 contracts.

12 Q. Do you know -- do you know who was
13 doing the estimate of what would be needed to
14 pay the -- cure the contracts?

15 A. No.

16 Q. So, I mean, you mentioned BarCap. You
17 don't have any knowledge of anyone from Barclays
18 at the time, presale, being involved in this, do
19 you?

20 A. Presale, no.

21 Q. So this was a Lehman -- it would
22 necessarily have to be a Lehman's effort?

23 MR. TAMBE: Objection to the form of
24 the question. When was it a Lehman's
25 effort?

1 D. Coles
2 A. Post-sale, to the extent those
3 individuals were now BarCap employees, it
4 becomes a BarCap effort.

5 Q. Sure, but the estimate was created
6 preclosing, right? And here it is on a document
7 entitled "Balance Sheet As of September 17,
8 2008."

9 So we're talking about preclosing.
10 When we're talking about the estimate, the
11 transaction adjustment, the estimate of maximum
12 potential exposure, we're talking about
13 preclosing work, right?

14 A. Yes. In those early days getting a
15 good read of quite who you were working with was
16 a little difficult.

17 Q. But in the preclosing days, you're not
18 aware of any, any involvement by anyone from
19 Barclays in that estimating process; is that
20 correct?

21 A. I'm not, but I'd be surprised if
22 someone from Barclays hadn't taken a look at
23 that and got comfortable that that was a -- a
24 solid number.

25 Q. Well --

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<p>1 D. Coles</p> <p>2 A. I mean, if I was Barclays, I would</p> <p>3 want that number to be as high as possible.</p> <p>4 Q. Well, do you have -- did you have any</p> <p>5 discussions with Barclays about any involvement</p> <p>6 in estimating that number?</p> <p>7 A. No.</p> <p>8 Q. And just to be clear, you're not aware</p> <p>9 that anyone from Barclays was involved in coming</p> <p>10 up with that estimate?</p> <p>11 A. No.</p> <p>12 Q. Okay. And if in fact this contract --</p> <p>13 have you had contracts -- have you been involved</p> <p>14 in contracts where the purchaser was actually</p> <p>15 committing to assume a certain amount of</p> <p>16 liability?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Is that common?</p> <p>19 A. Yes. In fact, that's the situation</p> <p>20 with Finlay with a very small go-forward part of</p> <p>21 the business, where the employee liabilities,</p> <p>22 for instance, might be a million dollars and the</p> <p>23 purchaser is on the hook for a minimum of</p> <p>24 625,000.</p> <p>25 Q. What happens if the estimates turn out</p>	<p>1 D. Coles</p> <p>2 to be high and the actual amount incurred turned</p> <p>3 out to be lower?</p> <p>4 A. Well, with that mechanism that we had</p> <p>5 in Finlay, that we have in Finlay, if, for</p> <p>6 instance, it's going to happen, I think, the</p> <p>7 purchaser ultimately takes more like 400,000 of</p> <p>8 liabilities on. It will have to pay the estate</p> <p>9 the top-up to the minimum of 625. So it'll</p> <p>10 actually go out-of-pocket and write the estate a</p> <p>11 check for 225,000.</p> <p>12 Q. And that's a function of the written</p> <p>13 contract that two sophisticated --</p> <p>14 A. Yes.</p> <p>15 Q. -- parties entered?</p> <p>16 Yes?</p> <p>17 A. Yes. Well, one party is not that</p> <p>18 sophisticated, as we're now finding out.</p> <p>19 Q. So, from your perspective, your</p> <p>20 earlier comment about, you know, assumed</p> <p>21 liabilities being part of consideration, that's</p> <p>22 in a situation where the purchaser agrees to pay</p> <p>23 a certain amount of liability, correct?</p> <p>24 A. Yes.</p> <p>25 MR. TAMBE: Objection to the form of</p>
Page 40	Page 41
<p>1 D. Coles</p> <p>2 the question.</p> <p>3 A. I think it's also a solution to not</p> <p>4 being exactly clear what the ultimate number is</p> <p>5 going to be, but when you're trying to compare</p> <p>6 the virtue of one offer against another offer,</p> <p>7 and if one offer has got a going concern</p> <p>8 component to it with an assumption of</p> <p>9 liabilities, you need to be able to, despite not</p> <p>10 having a certainty of number, with a mechanism</p> <p>11 whereby you say you have to take a minimum X, at</p> <p>12 least you can put X in your analysis and know</p> <p>13 that that party is liable for that.</p> <p>14 Q. And you've seen this drafted up in</p> <p>15 contracts before, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And so this is something that</p> <p>18 sophisticated contract attorneys and advisors</p> <p>19 can contract for?</p> <p>20 A. In -- in a normal negotiation where</p> <p>21 there's time to negotiate, yes.</p> <p>22 Q. Did you think that there was not time</p> <p>23 to draft up that contract language in the</p> <p>24 Barclays transaction?</p> <p>25 MR. TAMBE: Objection to the form of</p>	<p>1 D. Coles</p> <p>2 the question.</p> <p>3 You can answer.</p> <p>4 A. Very complex transaction, and I</p> <p>5 understand that, from reading around the topic,</p> <p>6 that Barclays was in negotiation prefiling, I'm</p> <p>7 not sure that that was more than a week or two</p> <p>8 of due diligence, and then closed the</p> <p>9 transaction the week of the filing.</p> <p>10 That's a very short period to do due</p> <p>11 diligence, negotiate a contract, and then close,</p> <p>12 but these were, you know, the circumstances were</p> <p>13 unprecedented.</p> <p>14 Q. And these unprecedented circumstances,</p> <p>15 is it your understanding that both the purchaser</p> <p>16 and seller were assuming a wide range of risk</p> <p>17 given the uncertainty associated with assets and</p> <p>18 liabilities?</p> <p>19 MR. TAMBE: Objection to the form of</p> <p>20 the question. Foundation.</p> <p>21 A. I'm not sure that the risk was equally</p> <p>22 kind of spread between both parties. I think</p> <p>23 the -- the buyer could, through mechanisms such</p> <p>24 as this, by having some healthy estimates which</p> <p>25 reduced the ultimate purchase consideration,</p>

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1 D. Coles
2 any way?
3 MR. TAMBE: Objection to form and
4 foundation.
5 A. My office was next door to Jim
6 Fogarty's. As I mentioned, Jim Fogarty, who was
7 COO, had also been tasked with or had been
8 tasked with watching this transaction through
9 the closing, and then I know that he did some
10 deep analysis into the Cusips for the securities
11 that were transferred and he continued to just
12 analyze the transaction generally.
13 I am fairly confident that, through my
14 interaction with Terry Berman and a knowledge
15 that the cure amount was ultimately more like
16 300, and perhaps I knew that 60 days in because
17 of the 60-day, if I haven't asked you to cure it
18 and assume and assign it, I'm not ultimately
19 going to be able to, and that was an agreement
20 between the parties that trumped the code, I'm
21 pretty confident that I would have had a
22 conversation with Jim about that and would have
23 recognized that the way the contract was
24 written, that was a substantial pickup to the
25 purchaser compared with the estimate.

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1 D. Coles
2 number ultimately is going to be much, much less
3 than 1645 and here's the first wave of them.
4 Q. Do you know if -- do you know if you
5 tried to figure that out?
6 A. I don't think I knew that number. I
7 don't recall knowing that number.
8 Q. Okay. Do you recall the -- that the
9 Closing Date Contracts were actually listed
10 prior to closing?
11 A. No.
12 Q. Do you know one way or the other, or
13 you just don't recall?
14 A. I don't recall.
15 Q. On the -- the transaction adjustment,
16 1645, on the left you have these amounts in the
17 columns, 831, 917, do you see those, 701?
18 A. Yes.
19 Q. What is -- what is your understanding
20 of what those would be and why they would be
21 increased by a transaction adjustment?
22 MR. TAMBE: Objection to the form of
23 the question. Foundation.
24 A. What would be typical in a balance
25 sheet is that the balance sheet would include an

1 D. Coles
2 Q. But do you recall that conversation or
3 are you just assuming?
4 A. I'm pretty confident I would have had
5 that conversation.
6 Q. And do you know when you would have
7 had -- or, when you had that conversation?
8 A. Well, I think that, for the number to
9 have become concrete, it would have been -- it
10 sounds like it would have been 60 days in, so
11 sometime after the 60-day limit after the
12 closing.
13 Q. Would the fact that the cure amounts
14 for the contract of the Closing Date Contracts,
15 would the fact that they were less than 200
16 million have caused you any concern or
17 questioning?
18 MR. TAMBE: Objection to the form of
19 the question.
20 A. I don't think I would have known how
21 the 200 related to what they might have been on
22 this list at 1645 as. I think if they were at a
23 substantial discount from what they were those
24 particular contracts were in this 1645, that
25 could have alerted me to it looks like this

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1 D. Coles
2 amount for accounts payable. Those are amounts
3 due to third parties for the provision of goods
4 and services that haven't been paid for as of
5 the date of that balance sheet. It's not
6 typical in a going concern balance sheet to have
7 anything on -- included there for cure payment,
8 for instance.
9 So I would have read "cure
10 payments/accounts payable" to mean that, in the
11 case of these two estimated period-end balance
12 sheets, these first two columns, 831 and 917,
13 that that relates to an accounts payable
14 balance, and that the "Cure Payments"
15 description applies to the "Transaction
16 Adjustment" amount that's further into the
17 spreadsheet.
18 And I would have also known from
19 experience that companies, unless they have had
20 quite a lot of time after the date of a close
21 for a balance sheet, find it very difficult to
22 estimate what their accruals and liabilities are
23 because often those amounts aren't known until a
24 vendor sends an invoice at, let's say, the end
25 of the month.

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<p>1 D. Coles</p> <p>2 And here we have a stub period that</p> <p>3 ends at the -- on the 17th. It's even more</p> <p>4 difficult because you may end up having to</p> <p>5 apportion an invoice that is for a longer</p> <p>6 period.</p> <p>7 Q. At any point did you have occasion to</p> <p>8 confirm that the -- the amounts in the left</p> <p>9 column, the 701, 605, were not capturing all</p> <p>10 cure payments?</p> <p>11 MR. TAMBE: Objection. Objection to</p> <p>12 the form of the question.</p> <p>13 A. No.</p> <p>14 Q. Okay. Just so I understand you, when</p> <p>15 you say you assume there were more in terms of</p> <p>16 accounts payable, that means is it more current</p> <p>17 amounts owed?</p> <p>18 A. Can you rephrase that?</p> <p>19 Q. You draw a distinction between kind of</p> <p>20 the accounts payable aspect of it and the cure</p> <p>21 aspect of it --</p> <p>22 A. Yes.</p> <p>23 Q. -- in explaining why there would be --</p> <p>24 A. Right. Let's give an example.</p> <p>25 Perhaps you have a contract for services to</p>	<p>1 D. Coles</p> <p>2 provide IT support. There may be -- the monthly</p> <p>3 amount might be outstanding, so at the end of</p> <p>4 August, for instance, you might owe August's</p> <p>5 bill of \$10 million, but that if you wanted to</p> <p>6 ultimately cure that contract, there may be</p> <p>7 something in that contract that says something</p> <p>8 whereby you would have to pay more than that 10</p> <p>9 million to take on the contract or less than</p> <p>10 that 10 million.</p> <p>11 Q. And is that situation consistent with</p> <p>12 your discussion with the Office Services folks?</p> <p>13 MR. TAMBE: Objection to the form of</p> <p>14 the question. Is what situation consistent?</p> <p>15 A. I don't remember having those -- that</p> <p>16 specific a discussion.</p> <p>17 Q. I'm going to show you a document we'll</p> <p>18 mark as 585A.</p> <p>19 (Exhibit 585A, an e-mail from K. Wong</p> <p>20 to M. Stewart and L. Chiu dated September</p> <p>21 22, 2008, marked for identification, as of</p> <p>22 this date.)</p> <p>23 Q. Do you recognize this chain involving</p> <p>24 yourself and others on September 22, 2008?</p> <p>25 A. I don't remember this specific e-mail,</p>
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<p>1 D. Coles</p> <p>2 but I recognize these names with the exception</p> <p>3 of Brett Beldner.</p> <p>4 Q. The original in time e-mail from Marie</p> <p>5 Stewart, who is Marie Stewart?</p> <p>6 A. I think she was S.E.C. reporting for</p> <p>7 Lehman and then moved across to BarCap.</p> <p>8 Q. Her e-mail subject, "David Coles of</p> <p>9 A&M needs to talk to you at 4 P.M. today about</p> <p>10 GL structure, et cetera. He wants to get a</p> <p>11 handle on Remain Co. and what Barclays need</p> <p>12 too."</p> <p>13 Is that consistent with your</p> <p>14 recollection of some of the work -- you were</p> <p>15 trying to get a handle on what assets and</p> <p>16 liabilities had gone over and what assets and</p> <p>17 liabilities remained with Lehman that you were</p> <p>18 going to be responsible for?</p> <p>19 A. Yes.</p> <p>20 Q. And on the top of that, Kristy Wong</p> <p>21 writes, "Just spoke to him. He just wants to be</p> <p>22 in the loop on how we are segregating assets</p> <p>23 being sold to Barclays from the rest."</p> <p>24 What does that mean? How were</p> <p>25 segregating assets?</p>	<p>1 D. Coles</p> <p>2 A. It's typical for a company to run a</p> <p>3 trial balance or a general ledger account</p> <p>4 structure, and knowing that the -- knowing now</p> <p>5 that Barclays purchased the infrastructure, I</p> <p>6 wanted to make sure that it was capable of</p> <p>7 continuing to maintain and report to us a</p> <p>8 statement of its assets, liabilities, P&L and</p> <p>9 cash flow going forward. Because we were very</p> <p>10 reliant on Barclays because all of that</p> <p>11 backbone, if you will, went across to Barclays</p> <p>12 as part of the transaction, yet we were</p> <p>13 responsible for a significant number of assets</p> <p>14 and value of assets and needed to be able to</p> <p>15 first understand what we were responsible for</p> <p>16 and then slowly monetize those assets.</p> <p>17 Q. And did you have fairly regular</p> <p>18 correspondence or communications with Kristy</p> <p>19 Wong in this time period?</p> <p>20 A. Yes.</p> <p>21 MR. TAMBE: Objection to the form of</p> <p>22 the question.</p> <p>23 Q. The people you're interacting with at</p> <p>24 Lehman, whether they stayed at Lehman or went</p> <p>25 over to Barclays, were they cooperative in</p>

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<p>1 D. Coles 2 providing you information? 3 A. Four out of ten. 4 Q. Is that good or bad in your 5 experiences? 6 A. It was -- it was pretty bad, but we -- 7 we all recognized that they had probably put in 8 some really long days in the run-up to the 9 filing and then after the filing, and that their 10 employer had changed for those people who had 11 moved across to BarCap, they were now employed 12 by BarCap, and although they were obligated, or 13 BarCap was obligated to provide transitional 14 services, we were probably going to be 15 deemphasized as a priority. So it was necessary 16 for us to continue to chase things so that we 17 got some attention. 18 Q. So it had to do with more chasing and 19 asking than you would have liked? 20 A. Yes. 21 Q. Was there ever a point in time when 22 they flat-out refused to give you something you 23 needed? 24 A. No. 25 Q. Let me go ahead and show you a</p>	<p>1 D. Coles 2 document we'll mark as 586A. 3 (Exhibit 586A, a document bearing 4 Bates Nos. BCI-EX-(S)-6332 through 6340, 5 marked for identification, as of this date.) 6 Q. Do you recognize this as an e-mail 7 from yourself dated September 24, 2008? 8 A. I do. 9 Q. And did you draft notices or 10 correspondence to vendors to try to explain the 11 Barclays transaction in terms of Barclays having 12 the election of assuming or not assuming certain 13 contracts? 14 A. I think I did. I mean, this e-mail 15 references a vendor letter and talking points. 16 Those would be standard operating procedure for 17 us in a situation like this. 18 Q. Uh-huh. 19 A. I don't recall the exact content. 20 Q. And if you would look at the 21 attachments there, there's a Bates number at the 22 bottom right 6335, you have "Vendor Inquiries." 23 Do you see that? 24 A. Yes. 25 Q. Okay. And then it's the draft letter</p>
Page 56	Page 57
<p>1 D. Coles 2 that's on 6339? 3 A. Yes. 4 Q. And on the following page, 6340, 5 second sentence at the top, "While the contracts 6 assumed at closing assumes the agreements 7 initially identified by Barclays, Barclays also 8 has the option to assume further agreements and 9 liabilities for 60 days following the close of 10 the sale. Barclays is actively reviewing the 11 current Lehman contracts relating to the 12 broker-dealer business, and we request your 13 patience and cooperation during this transition 14 period." 15 Does that refresh your recollection 16 that it was basically a 60-day period that 17 Barclays had to decide which contracts it wanted 18 to assume -- 19 MR. TAMBE: Objection to form. 20 Q. -- other than the ones identified 21 prior to closing as Closing Date Contracts? 22 MR. TAMBE: Objection to the form of 23 the question. 24 A. It says what it says. I -- I can't 25 remember the 60 days other than from today.</p>	<p>1 D. Coles 2 Q. Okay. At the time, you would have, if 3 that's the case, that it was 60 days, at the 4 time you likely would have known it? 5 A. I think so. 6 Q. And did the -- on the second page of 7 this, which is 6336, second page of the Vendor 8 Inquiries, there's a Website given there, the 9 Epiq Systems? 10 A. Yes. 11 Q. Does that refresh your recollection 12 that it was -- 13 A. Yes. 14 Q. -- hosted by Epiq? 15 And do you recall whether the Website 16 actually showed up to date which contracts 17 Barclays had assumed and the cure amounts for 18 those contracts? 19 A. I believe that was its purpose. I'm 20 not sure I visited it to explore that. 21 MR. THOMAS: Okay. Are you doing okay 22 break-wise? Do you want a short break or do 23 you want to keep going? 24 THE WITNESS: I'm fine. 25 Do you have a sense for timing?</p>

1 D. Coles
2 MR. THOMAS: We're moving along really
3 good.

4 THE WITNESS: Okay.

5 MR. THOMAS: It's only the dark blue
6 tabs.

7 THE WITNESS: If anyone else needs a
8 break, that's fine. You want five minutes?

9 MR. THOMAS: If everyone's okay, we'll
10 keep going.

11 MR. TAMBE: We can keep going.

12 Q. Let me show you a document we marked
13 this morning -- actually, marked previously as
14 563B. These aren't your notes. They're Ms.
15 Korycki's notes of a meeting.

16 My question to you is, do you recall
17 attending a meeting on or about September 29,
18 2008 with folks from Alvarez, Weil Gotshal and a
19 couple Lehman or former Lehman executives, Paolo
20 Tonucci and Alex Kirk, to discuss the details of
21 the Barclays transaction?

22 A. I recall meeting with those types of
23 players. Whether I was at this one on the 29th,
24 I'm not sure. Paolo was a difficult person to
25 track down.

1 D. Coles
2 transferred --

3 A. Yes.

4 Q. -- over to Barclays?

5 A. Yes.

6 Q. I think there was testimony that there
7 were other people from Alvarez & Marsal at this
8 meeting, and I think it includes Bill Fox, but
9 I'd have to check that.

10 I'm not going to go through a lot of
11 detail on these notes, but do you recall
12 generally that Lehman had a repo agreement with
13 the Fed shortly after bankruptcy and the Fed
14 asked Barclays to step into that repo agreement
15 essentially so the Fed could get out of it?

16 MR. TAMBE: Objection to the form of
17 the question.

18 A. Generally. Generally, yes.

19 Q. Looking at page 4889, do you recall at
20 this meeting, which you may or may not have been
21 at which may or may not have been led by Mr.
22 Fogarty, do you recall there being a flip sheet
23 resembling the chart at the top of 4889?

24 A. I don't.

25 Q. Do you recall generally that Barclays

1 D. Coles

2 Q. And you have no reason to, if others
3 recall that you were there, you have no reason
4 to doubt that you were at this meeting?

5 A. Correct.

6 Q. And do you recall the purpose of the
7 meeting?

8 A. No.

9 Q. And just to be clear, putting aside
10 that you can't definitively say these notes are
11 of that meeting --

12 A. Right.

13 Q. -- you do remember such a meeting in
14 this general timeframe?

15 A. I remember a meeting with -- I mean,
16 I've been at a meeting with those individuals.
17 Whether this was the topic, I'm not sure. This
18 might well have been the meeting that Jim
19 Fogarty really tried to take the lead on.

20 If it is, it would have also had Bill
21 Fox at this meeting, and the main thrust of that
22 meeting, if this is the one, and if I was at it,
23 I think was a lot to do with the Cusips, which
24 was the security side of things.

25 Q. The repo collateral that was

1 D. Coles

2 gave or was to give \$45 billion in cash in
3 return for getting securities that were marked
4 at roughly in the \$49.7 billion range?

5 MR. TAMBE: Object to form.

6 A. Generally, yes.

7 Q. Do you recall in this meeting a
8 description of the assets that were conveyed to
9 Barclays as part of the sale transaction?

10 A. I seem to remember either it existing
11 at that meeting or being produced pretty shortly
12 thereafter a very thick wad of paper that was
13 the Cusip listing of these securities. I
14 remember that living in Jim Fogarty's office for
15 a long time.

16 Q. Do you remember also getting a
17 detailed description from Weil Gotshal as to
18 what of the assets that went over as part of the
19 deal and what stayed?

20 MR. TAMBE: Objection to the form of
21 the question.

22 A. I don't recall.

23 Q. Do you recall -- do you know who Lori
24 Fife -- sorry. Go ahead.

25 A. I did -- I did have conversations

1 D. Coles
2 along those lines with Rod Miller. I didn't
3 have conversations with Lori Fife.
4 Q. Do you know if Lori Fife was on the
5 phone for this meeting?
6 A. I don't recall that. I don't think
7 anybody was on the phone.
8 Q. Do you recall Rod Miller was at the
9 meeting?
10 A. I don't, but I wouldn't be -- I
11 wouldn't be surprised if he had been there.
12 Q. Was Rod Miller and the folks at Weil
13 reasonably responsive to your requests for
14 information about the sale transaction?
15 A. Yes.
16 Q. Do you recall that, as part of the
17 sales transaction, there was also certain assets
18 from Lehman's unencumbered box or clearance box
19 transferred as part of the sale?
20 A. Yes. Those descriptions ring a bell.
21 Q. Did you have occasion as part of your
22 work to -- strike that. Do you recall that
23 approximately -- clearance box assets valued at
24 approximately 1.9 billion were to be conveyed as
25 part of the sale transaction?

1 D. Coles
2 A. I think it was more that there was
3 quite a delay from us being informed that there
4 was 45 billion in securities that it took a
5 while to actually get that listing to tie out to
6 45 billion in securities.
7 It seemed as though some of the
8 documentation was being prepared after the fact
9 to support something, and that in itself
10 isn't -- might have surprised me at the time,
11 but in retrospect, doesn't surprise me now
12 because of the distress the organization was
13 going through and all of the stress that the
14 Treasury and Liquidity Team was being put
15 through in the days before the filing and
16 immediately after the filing.
17 Q. Are you referring to the -- to the
18 list as Exhibits A and B that were eventually
19 filed with the court?
20 MR. TAMBE: Objection to the form of
21 the question.
22 A. I don't recall that level of detail.
23 Q. Do you know -- you spoke of distress
24 to the company during this period of time.
25 During that week of September 15 after the

1 D. Coles
2 A. No. I remember having a certain
3 degree of relief that this was all in Jim
4 Fogarty's work stream.
5 Q. Okay. Let me ask you to turn to page
6 4890. Do you recall there being an issue that
7 not all of the 45 billion -- not all of the
8 assets that Barclays was supposed to be
9 receiving being received because of something
10 JPM did with respect to 7 billion of the 45
11 billion?
12 MR. TAMBE: Objection to form.
13 A. Yes, but I don't think as a result of
14 this meeting I might have been at. I think from
15 just general discussion with colleagues after
16 the fact, and I do remember that it seemed as
17 though that listing of securities was a bit of a
18 moving target.
19 Q. That the securities -- that there was
20 a list of Fed repo securities, but that the
21 securities that actually went over to Barclays
22 were different than that list?
23 MR. TAMBE: Objection to the form of
24 the question. Mischaracterizes his
25 testimony. Foundation.

1 D. Coles
2 bankruptcy filing, do you know whether the marks
3 on the company's securities were being updated
4 daily?
5 MR. TAMBE: Objection to form.
6 Foundation.
7 A. I don't. I don't know.
8 Q. Looking on 4890, almost near the
9 bottom, there's a note there that says, "Paid
10 38," I think it's 38 billion, "cash to buy 42.9
11 billion Lehman assets." It says, "Value
12 different valuation, 5.1," and then under "42.9
13 billion" it says "38," which should be 38
14 billion.
15 Do you recall at this meeting there
16 being a discussion of a difference in valuation
17 or a question of valuation, proper valuation,
18 for the assets that came over to Barclays?
19 MR. TAMBE: Objection to the form of
20 the question and foundation.
21 A. I think I do recall being aware of
22 that difference in valuation. Whether I became
23 aware of it at this point in time, I'm not sure.
24 I liken some of this a little bit to that scene
25 in "Close Encounters" where the lights are

D. Coles

flashing up on the board. You can see that the lights are flashing, but you've got no idea what it really means.

Q. At some point did you have an understanding that the valuation difference arose because when securities that were marked as about \$43 billion were transferred to Barclays, Barclays looked at them and said, "This isn't worth \$43 billion. We think it's worth more like \$38 billion"?

MR. TAMBE: Objection to the form of the question.

MR. SHELLEY: Objection to the form of the question.

A. You're educating me at this point.

Q. What did you -- what do you recall about the difference, the valuation difference between the 43 billion and the 38 billion and the \$5 -- \$5 billion --

MR. TAMBE: Objection to the form of the question and foundation.

MR. THOMAS: There is no question.

MR. TAMBE: Finish your question.

Q. Let me restate it. What do you recall

D. Coles

about the difference between the 43 billion number and the \$38 billion number and the \$5 billion valuation difference?

MR. TAMBE: Objection to the form of the question.

MR. SHELLEY: Objection to form.

A. Very little, other than that difference between 5 billion relating to marks.

Q. Do you recall attending a presentation to the Creditors Committee on October 8 that included a description of that difference?

A. No, but if that -- that was probably our first Creditors Committee meeting, and I certainly attended that and presented, and it could well have been in that book.

Q. Turning -- turning the page to 4891, and under "Assets" do you see where it says "38 billion," then the "5 billion"?

A. Yes.

Q. And then the "43 billion." Does that refresh your recollection of the description of that difference at this meeting?

MR. TAMBE: Objection to the form of the question.

D. Coles

A. No. It doesn't describe the difference, it just restates it.

Q. Okay. Fair enough. Let me ask you to turn to -- well, the fact that it's restating it, is this -- do you recognize this as a, some type of attempted balance sheet here on the top of the page?

A. Yes.

Q. Does the fact that it's -- that \$5 billion difference is included in this manner, does that give you -- refresh your recollection as to the nature of the \$5 billion difference, other than it relates to marks and a difference in valuation?

MR. TAMBE: Objection to the form.

A. That isn't what it says.

Q. Okay. On the prior page it refers to a different valuation and it's referring to Lehman assets, correct?

MR. TAMBE: Excuse me. Are you now asking him to interpret these notes? Is that what the question is?

MR. THOMAS: The question is clear.

MR. TAMBE: It's not. Objection to

D. Coles

form and foundation.

A. I think I said I remember the 5 billion number. It was to do with marks, and I'm not sure that I learned that at this meeting, if indeed I was at this meeting.

Q. Let me go ahead and ask you to turn to the exhibit previously marked as 461A. It's entitled "Lehman Brothers Holdings, Inc. Report to Unsecured Creditors Committee, October 8, 2008," and on the second page you're listed as apparently someone responsible for a presentation on significant transactions?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. Is this part of a presentation that Alvarez gave to the Creditors Committee?

A. Yes.

Q. Did you help prepare this written presentation?

A. Yes.

Q. Did you help present the presentation?

A. Yes.

Q. And can you tell me, if you would turn

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Page 71

1 D. Coles
2 to page 4531, did you help prepare or contribute
3 to the content on page 4531?
4 A. No.
5 Q. Were you there when this was presented
6 to the Creditors Committee?
7 A. Yes.
8 Q. Under "Assets Purchased" do you see
9 where it says, "43.1 Billion Repo Assets - Book
10 Value per Lehman 'stale' marks; negotiated a \$5
11 billion reduction"?
12 A. Yes.
13 Q. Does that refresh your recollection as
14 to the \$5 billion difference between the 43
15 billion and 38 billion relating to an issue
16 concerning whether the Lehman marks were stale?
17 MR. TAMBE: Objection to form.
18 A. Well, this -- this page might have
19 been my first better understanding of how that 5
20 billion fit into the transaction.
21 Q. The 5 billion that's referred to in
22 the notes of the meeting with Weil and former
23 Lehman employees, Kirk and Tonucci, on or about
24 September 29, do you know what -- do you have
25 any recollection of whether that was explained

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1 D. Coles
2 Korycki, and I just wanted to ask if you had
3 seen this balance sheet before?
4 A. I'm not sure.
5 Q. Okay. Under "Assets" do you see where
6 it says Repo Assets, 38 billion; Negotiated Mark
7 Haircut, 5 billion; Assets Transferred Under
8 Repo ('Stale' Marks), 43 billion?
9 A. Yes.
10 Q. Do you have any reason to believe that
11 the \$5 billion difference, valuation difference,
12 between the marked amount of the Lehman repo
13 collateral sent to Barclays and the amount at
14 which it was valued, 38 billion that's reflected
15 in this balance sheet, which was circulated on
16 October 6 and the reference in your U.C.C.
17 presentation to the negotiated \$5 billion
18 reduction against Lehman's stale marks, you
19 don't have any reason to believe that that \$5
20 billion valuation issue was any different than
21 the valuation issue described to you in the
22 meeting with Mr. Kirk and Mr. Tonucci?
23 MR. TAMBE: Objection to form.
24 MR. SHELLEY: Objection to form.
25 MR. TAMBE: Foundation. Lack of

1 D. Coles
2 to you, the \$5 billion, at the time and what was
3 said about that?
4 MR. TAMBE: Objection to the form of
5 the question. Foundation.
6 A. I remember certainly "marks" was used.
7 I'm seeing "stale marks" here. I think that's
8 Jim quoting from that meeting, and it's "stale"
9 in inverted commas.
10 THE VIDEOGRAPHER: I'm sorry. I need
11 to switch the tapes.
12 The time is 4:22 P.M. We're going off
13 the record.
14 (Pause in the proceedings.)
15 THE VIDEOGRAPHER: The time is 4:26
16 P.M. We're back on the record. Video
17 number 2.
18 BY MR. THOMAS:
19 Q. While keeping that page open, from the
20 U.C.C. presentation, let me also ask you to look
21 at 463B. This is -- it's an e-mail with
22 representative of the Creditors Committee. I'm
23 not going to ask you about the e-mail, but the
24 attachments, in the attachments, the first sheet
25 of which is a balance sheet put together by Ms.

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1 D. Coles
2 foundation.
3 A. I think it's the same 5 billion.
4 Q. And does reviewing these other
5 documents, does it refresh your recollection at
6 all about the discussion at the meeting with
7 Kirk and Tonucci and Weil about this \$5 billion
8 valuation issue or difference?
9 MR. TAMBE: Objection to form and
10 foundation.
11 A. It's -- it's bringing back some
12 memories, yes.
13 Q. Can you just describe what it was that
14 was explained to you at the meeting with Kirk
15 and Tonucci?
16 A. I don't remember that.
17 Q. Well, what were the memories that it's
18 bringing back?
19 A. I remember the marks. I remember the
20 word "stale." I remember 5 billion.
21 Q. Is it fair to assume that at the time
22 you would have either understood it or asked
23 somebody about it?
24 MR. TAMBE: Objection to form.
25 A. I don't think I knew what it meant. I

1 D. Coles
2 was staring at flashing lights.
3 Q. Well, again, do you recall -- you
4 don't recall the description of it given to you
5 in the Kirk and Tonucci and Weil meeting on or
6 about the 29th of September?
7 A. I recall stale marks, 5 billion.
8 Q. When you -- when you understood that
9 there was this valuation difference or issue
10 with respect to Lehman's marks on certain
11 securities that had been transferred to
12 Barclays, did it surprise you or cause you any
13 concern or cause you to take any follow-up
14 action?
15 MR. TAMBE: Objection to form.
16 A. No. It didn't surprise me because I
17 didn't know what it meant.
18 Q. Do you recall or do you have a
19 recollection of not recalling -- not knowing
20 what it meant?
21 MR. TAMBE: Objection to form.
22 A. I didn't -- I didn't focus enormously
23 on it. I was comforted that Jim Fogarty was
24 hunting this stuff down.
25 Q. And based upon your understanding of

1 D. Coles
2 A. What I do remember about that was in
3 the context of us, as the estate, wanting to
4 make sure that those individuals that BarCap had
5 retained solely for purposes of providing the
6 residual estate transitional services, that that
7 compensation was going to allow Barclays to
8 retain those people so that Barclays would be
9 able to perform under the Transitional Services
10 Agreement and that we, the estate, would get the
11 services we thought we could rightly expect. So
12 we were -- and we also, of course, were
13 reimbursing Barclays for those transitional
14 services. So we would have been interested in
15 what kind of bonus pool was available for those
16 people in the TSA.
17 Q. And did that involve going back and
18 looking at the \$2 billion number that's
19 referenced in the "Transaction Adjustment"
20 column?
21 A. I seem to remember that the -- that
22 this was an evolving issue and that it wasn't
23 entirely clear, I don't think, that Barclays
24 was -- Barclays and Lehman I think had very
25 different compensation structures and

1 D. Coles
2 the conditions at Lehman the week of September
3 15, would it surprise you if Lehman's marks by
4 the end of that week were stale and not up to
5 date, updated, or accurate?
6 MR. TAMBE: Objection to the form of
7 the question. Foundation.
8 A. I wouldn't have had a basis for making
9 a determination.
10 Q. Do you recall at the meeting with Kirk
11 and Tonucci and Weil whether someone from
12 Alvarez asked about the \$5 billion difference or
13 whether it was volunteered by Kirk or Tonucci?
14 A. I don't recall.
15 Q. If it was going to be accounted for in
16 the balance sheet, would it have been important
17 to understand what exactly it was, the \$5
18 billion difference?
19 A. Yes.
20 Q. Did you ever have -- we talked about
21 the transaction adjustment with respect to cure
22 and briefly with respect to compensation also.
23 Did you ever have occasion to
24 investigate or learn more about the transaction
25 adjustment for -- that related to compensation?

1 D. Coles
2 communication timelines and payment timelines in
3 terms of their year-end bonus pools, and so
4 there were individuals that Barclays had taken
5 on, former Lehman people, and there seemed to be
6 a lot of delay in getting crisp communication
7 out of BarCap as to how they were going to
8 communicate bonuses and when they were going to
9 communicate bones not only to the people that
10 they assumed and offered employment to, but also
11 those -- but also those people who were in the
12 transitional services box who were there for
13 just a very limited purpose and probably just a
14 short period of time.
15 And so we were seeking clarity on
16 that, but it was -- it was clear that there was
17 much debate within Barclays as to how to handle
18 some of this.
19 Q. Have you ever had occasion to look at
20 or assess the value of the exchange-traded
21 derivatives or related collateral or margin that
22 was conveyed to Barclays as part of the sale
23 transaction?
24 A. No.
25 MR. MILLS: Object to the form.

1 D. Coles
2 Q. Do you know if you participated in a
3 meeting with FTI and Houlihan on approximately
4 October 2, 2008 to discuss issues in the case?
5 A. That sounds broad enough that I could
6 have been at that.
7 Q. Let me, just for good order, let me
8 show you an exhibit previously marked as 579A.
9 It's a one-page set of notes from the meeting
10 taken by Ms. Korycki, and if you would, just by
11 glancing at it, give me a sense whether it
12 triggers any recollection as to whether you were
13 at this meeting or not.
14 A. It doesn't say I was there.
15 Q. No, I'm not sure it says who was
16 there.
17 A. No, it's not illuminating.
18 Q. Okay. Do you have any basis or reason
19 to believe that anyone working for Lehman or
20 Barclays did anything improper or acted in bad
21 faith in connection with this transaction?
22 MR. TAMBE: Objection to form and
23 foundation.
24 A. I don't, but I have seen many times
25 when a company is being purchased and there is

1 D. Coles
2 conflict, you're not aware of any evidence of
3 anyone acting in bad faith in connection with
4 the sales transaction, though; is that correct?
5 MR. TAMBE: Objection to form and
6 foundation.
7 A. I'm not aware of anything in
8 particular, no.
9 MR. THOMAS: Thank you. I have
10 nothing further.
11 THE WITNESS: Thank you.
12 MR. TAMBE: I have no questions.
13 MR. SHELLEY: I have a few questions.
14 EXAMINATION BY
15 MR. SHELLEY:
16 Q. Mr. Coles, I'm Scott Shelley with the
17 law firm Quinn Emanuel. We're counsel for the
18 Official Committee of Unsecured Creditors.
19 I just have a few follow-up questions
20 about this Exhibit 579 we were talking about a
21 moment ago. I believe you stated that looking
22 at the notes you thought they were not
23 illuminating as to who was there; is that
24 correct?
25 A. Yes.

1 D. Coles
2 an estate that is selling assets and those
3 individuals representing the estate are soon to
4 be employees of the purchaser. Those employees
5 are in a conflicted situation, and those
6 employees would have to have very robust
7 integrity to be switching hats and yet
8 representing the estate in the process of
9 switching hats over to the new employer. It's a
10 tough position to put employees in.
11 Q. And it's one that commonly occurs out
12 of necessity?
13 A. It -- yes.
14 Q. And were you aware that Lehman
15 employees involved in negotiating the deal were
16 also at the same time negotiating employment
17 agreements with Barclays?
18 A. Only after the fact.
19 Q. Were you aware that the board was told
20 that?
21 A. No.
22 MR. TAMBE: Objection to the form of
23 the question.
24 A. No.
25 Q. Putting aside that potential for

1 D. Coles
2 Q. Do you have any recollection at all as
3 to who may have been at that meeting?
4 A. No. 579A, no.
5 Q. Do you have any recollection of that
6 meeting at all?
7 A. No.
8 MR. SHELLEY: That's all I've got.
9 Thank you.
10 MR. THOMAS: Nothing further.
11 THE VIDEOGRAPHER: The time is 4:41
12 P.M. We're going off the record.
13 oOo
14
15
16
17
18

DAVID JAMES COLES

Subscribed and sworn to
before me this day
of 2010.

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF NANCY DENIG

14 New York, New York

15 August 21, 2009

16
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24044
20
21
22
23
24
25

Page 6

Page 7

DENIG - CONFIDENTIAL

NANCY DENIG,
called as a witness by the parties,
having been duly sworn, testified as
follows:

EXAMINATION BY

MR. HINE:

Q. Good morning, Ms. Denig. How are you?

A. Good.

Q. I introduced myself before, but my
name is Bill Hine. I am from the firm of Jones
Day, which is special counsel to Lehman Brothers
Holdings, Inc. in connection with all the
bankruptcy proceedings that are going on.

So your deposition today is in
connection with those proceedings and some
discovery that we are taking in those proceedings.
Have you ever been deposed before?

A. I have not.

Q. Very simple. I am going to ask you a
bunch of questions. You are under oath, you are
going to give me truthful answers.

On occasion your counsel will raise an
objection or interpose an objection. He is either
doing that for any number of reasons, but I just

DENIG - CONFIDENTIAL

wanted to let you know that it doesn't relieve you
of the obligation to answer the question. You
still have to answer the question, unless of
course your counsel instructs you not to answer
the question, which he may do on occasion as well.

I think all the other counsel around
the table will introduce themselves as they get up
to ask you questions, if they have any, but if you
have any questions -- unless you have any
questions, we can get started.

One point of clarification before we
get started. I see e-mails addressed to N. Bayne.
Is that you?

A. That is my maiden name.

Q. So if I see --

A. Unfortunately when you were at Lehman,
when I got married -- my user profile before I got
married was N. Bayne, which was my maiden name.
When I got married, in order for them to change
the user name, they would have had to delete me
from the system altogether and I would have to
reapply for all my applications, which I didn't
want to do because I was already four years into
the company, so I left my user name as N. Bayne.

Page 8

Page 9

DENIG - CONFIDENTIAL

Q. If I see an e-mail addressed to
N. Bayne at Lehman --

A. That's me.

Q. Could you tell me how long you worked
for Lehman?

A. 15 years.

Q. So that's starting in --

A. 1994, January 20.

Q. OK. And could you kind of briefly
walk me through the progressions of positions you
held up until the end?

A. I started as an analyst in customer
service, which dealt with like trade discrepancies
for fixed income products.

Moved to P&L in the finance division,
where I supported the repo desk for central
funding for all types of fixed income assets.

I then took on various different
groups throughout the life, sales support, trade
support, P&L, structured repo, EMG, trade and
sales support, and probably that was pretty much
it. So I pretty much stayed on the fixed income
side pretty much all my career.

Q. What was the last position you held?

DENIG - CONFIDENTIAL

A. Last position, regional head for fixed
income repo, middle office, so that was trade
support, so we supported the traders in the daily
transactions that they executed.

We did sales support, which also
supported any trade confirmations, sales
confirmations, trade discrepancies with regards to
the salespeople.

We did -- we reported the P&L to the
business lines, and, you know, some various little
odds and ends, but nothing that needs to be
clarified.

Q. Who did you report to in that
position?

A. Jim Hraska.

Q. Any other people that you reported to
directly?

A. No.

Q. How long have you held this position?

A. Three years of all that. I just kept
getting more stuff added to me as my career
progressed. So I started with one group and got
another one, another, another, another. But
basically all in the same business line.

DENIG - CONFIDENTIAL

shortfall?

A. We weren't.

Q. And so what did you do then?

A. Because we basically ran out of time, the Fed and the DTC depositories ended up shutting down at a particular time and we didn't get everything that we wanted to over, because it wasn't enough time to do all the research.

Q. And you're talking about Thursday evening?

A. Thursday evening around 11 o'clock.

Q. So what was the shortfall by the time of -- by the time you ended on Thursday night?

A. I am not 100 percent sure of what the final figure was, but I want to say it was 42 billion is what they received.

Q. OK. So 42 is not the shortfall, 42 is what ultimately did make it?

A. Yeah.

Q. Was there a 7 or 8 billion dollar shortfall, do you recall?

A. Yes.

Q. Is that the genesis of what I have seen referred to as box loan?

DENIG - CONFIDENTIAL

A. Yes.

Q. And can you tell me what that is?

A. Well, because we didn't -- we couldn't make the rest of the collateral, because of the timing, they didn't receive the value of 7 million -- 7 billion worth of collateral. So Chase lent Lehman 7 billion dollars to give back to -- to give to Barclays to make up that.

Typically you wouldn't collateralize cash with cash, but at that late hour, that was really the only way to facilitate that so that Barclays was made whole.

Q. And what secured that loan?

A. Chase. The assets that we still had in the box, that Lehman still had in the box.

Q. And the box meaning what?

A. Our free collateral box, meaning any assets that didn't get delivered over to BoNY and was still in the possession of Lehman Brothers, Inc.

Q. And is that the 074 box?

A. No, it was a Chase box.

Q. OK. 074 box is separate?

A. That's a DTC box.

DENIG - CONFIDENTIAL

Q. I understand. OK.

So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day?

A. Well, we -- there was a lot of --

Q. I just mean Friday, the 19th of September.

A. 19th. So first thing in the morning, what we thought was pulled, that they were short collateral that we didn't finish, to try to get as much collateral that we knew was available in the DTC, because at this point the Fed collateral was all exhausted. We didn't have Treasuries, agencies. They went. They were delivered and they were reconciled with Barclays, that they received them.

The assets that we ran out of time to send were the DTC, what you referenced as 074 collateral, 636 collateral, which are the two DTC boxes that Lehman Brothers, Inc. owned.

The traders were basically using their front-end capture system to determine what the positions were that they had available and what they knew as unencumbered, and they delivered

DENIG - CONFIDENTIAL

those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays.

Q. And how much collateral was transferred to the BoNY box in connection with that effort?

A. A billion dollars, a billion and change.

Q. And now what was the purpose of transferring that to that BoNY box?

MR. SHAW: Objection, foundation.

A. We were under the impression we were still short market value.

Q. So that was short market value in connection with the September 18 repo?

A. Yes.

Q. So was that billion and change to substitute in for the cash that had been placed in the repo through the box loan?

MR. SHAW: Objection, foundation.

A. It wasn't my -- it wasn't my understanding, no.

Q. What did you understand it to be for?

A. It was just that BoNY said that they didn't have enough market value, you need to give

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 in a search for additional unencumbered</p> <p>3 collateral; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Did you have an understanding of why</p> <p>6 you were looking for this additional unencumbered</p> <p>7 collateral?</p> <p>8 MR. SHAW: Objection, asked and</p> <p>9 answered.</p> <p>10 A. My impression was that we were -- we</p> <p>11 had a shortfall in the delivery of the original</p> <p>12 repo, and we were just trying to find the rest of</p> <p>13 the -- the collateral to make up the shortfall in</p> <p>14 market value.</p> <p>15 Q. Again, I am a little confused. Is the</p> <p>16 shortfall in the market value of assets that were</p> <p>17 delivered -- withdrawn. I'll try that question a</p> <p>18 better way.</p> <p>19 Can you be more specific about the</p> <p>20 shortfall in the market value of securities that</p> <p>21 were delivered that you just told me about?</p> <p>22 A. Sure. When pens went down on the end</p> <p>23 of September 18, they came back to us, and who,</p> <p>24 I'm not really sure who, but saying -- and it was</p> <p>25 communicated down to us that we were short in the</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 value, in I believe the 1.9 billion dollar range.</p> <p>3 A billion of it was transferred Friday</p> <p>4 morning, which we didn't know what the total</p> <p>5 market value of that was until Monday, the 22nd,</p> <p>6 but on Saturday, those assets were not reflected</p> <p>7 in any of the documentation that anybody had at</p> <p>8 that point, because we didn't receive the file</p> <p>9 from BoNY until Monday morning.</p> <p>10 So Saturday basically we were told to</p> <p>11 look for -- we were told, tasked to look for</p> <p>12 1.9 billion. We kept referring to a billion of it</p> <p>13 was delivered already, so we were really on the</p> <p>14 search for 900 million odd.</p> <p>15 Q. And your understanding about what you</p> <p>16 were looking for and why came from conversations</p> <p>17 with Mr. Hraska; is that correct?</p> <p>18 A. Mr. Hraska and Mr. Forrest.</p> <p>19 Q. Did anyone ever tell you, Ms. Denig,</p> <p>20 that one of the reasons that additional collateral</p> <p>21 was transferred to BoNY on Friday, the 19th, was</p> <p>22 because Lehman had had to transfer cash as part of</p> <p>23 the repo?</p> <p>24 A. I knew Lehman transferred cash as part</p> <p>25 of the repo, so I wasn't sure how that was going</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 to be reconciled. I thought that potentially</p> <p>3 Chase and BoNY were kind of discussing that and</p> <p>4 working that out. I wasn't sure that they -- they</p> <p>5 segregated that collateral and were going to just</p> <p>6 deliver it the very next day, if Barclays would</p> <p>7 have given us the cash -- given Chase the cash</p> <p>8 back, and then they were given collateral worth</p> <p>9 that value.</p> <p>10 I wasn't sure how they were going to</p> <p>11 make that whole or whether they were just going to</p> <p>12 leave it as cash.</p> <p>13 Q. When Mr. Hraska testified last week,</p> <p>14 he told me that the reason additional collateral</p> <p>15 was transferred on the 19th from Lehman to BoNY</p> <p>16 for the benefit of Barclays, it was with the</p> <p>17 intention of releasing some of the cash that had</p> <p>18 been pledged as part of the September 18 repo.</p> <p>19 Did Mr. Hraska ever tell that information to you?</p> <p>20 MR. SHAW: Objection, form,</p> <p>21 mischaracterizes Mr. Hraska's testimony.</p> <p>22 But you can answer the question.</p> <p>23 A. As far as my recollection was, it was</p> <p>24 to satisfy the shortfall of collateral. How that</p> <p>25 was -- the 7 billion really didn't come more clear</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 to me or people told me about it until later on,</p> <p>3 but not at that particular time, no.</p> <p>4 Q. Have you ever heard at any time that</p> <p>5 the reason additional unencumbered collateral was</p> <p>6 moved to BoNY on the Friday, the 19th, was to</p> <p>7 release the cash that had been transferred as part</p> <p>8 of the repo on the 18th?</p> <p>9 A. I did not.</p> <p>10 Q. Do you have in front of you what has</p> <p>11 previously been marked as Exhibit 237?</p> <p>12 A. Yes.</p> <p>13 Q. I am also handing you what has</p> <p>14 previously been marked as Exhibit 150B. I don't</p> <p>15 think Mr. Hine marked that this morning.</p> <p>16 You will see, Ms. Denig, that both</p> <p>17 Exhibit 237 and Exhibit 150B have attachments; is</p> <p>18 that right?</p> <p>19 A. Yes.</p> <p>20 Q. And both the attachments appeared out</p> <p>21 of the file name TRI09192008.xls?</p> <p>22 A. Yes.</p> <p>23 Q. But Exhibit 237 appears to be</p> <p>24 version 3 of a spreadsheet with that same file</p> <p>25 name; is that correct?</p>

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A. OK, OK.

Q. Do you have any understanding of the difference between those two spreadsheets? I am obviously not expecting you to go through them line by line, CUSIP by CUSIP, but just if you could take a moment to look at them and tell me whether you have any understanding of the difference between the two, if any.

A. I don't see a difference.

Q. Just looking for the moment at Exhibit 237. Is that the spreadsheet that you created?

A. No.

Q. It appears to be sent from you to Kendall McLaughlin, William Bach and Bob Azerad?

A. Correct, but I did receive it from the Magics technology team. It is either Magics or BoNY, to be honest with you. No, it was definitely Magics.

Q. Can you explain what you mean by Magics?

A. Magics is a front-end system that would have been the mechanism that we did the pledges. So a trader inputs the information in,

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feeds into a trader system, feeds down to a settlement system, and then a delivery is made. So according to the front-end system, this is what the individual CUSIPs were that were sent to BoNY on the 19th, the morning of the 19th. And the market value -- where I wanted to see if it is different is that the values on the last page of both equal the same amount of money, one billion eighty.

One of them is a warrant which they didn't want, so I think they ended up delivering that back. So in Exhibit 237, you see how the last page, you have a total market value of 1,035,000,000, and then there is this one line that says 54 million?

Q. Um-hm.

A. And if you look at the file on the last page of Exhibit 150, the total value was 1,090,059,000. If you add up the two, it is the same value. So I'm assuming that the information is consistent, that it reflects the same information.

Q. OK.

A. The different version could just be

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the fact that something, you know, was shuffled around a little bit.

Q. And the market values that you see reflected on these two spreadsheets, Ms. Denig, is a market value that's assigned by Lehman, correct?

A. Yes.

Q. And if I understand your testimony correctly, these were CUSIPs that were transferred out from Lehman's box of DTC to BoNY for the benefit of Barclays on the 19th?

A. That's correct.

Q. And do you know whether or not the CUSIPs reflected in Exhibits 150B and 237 were ever returned to DTC's clearance boxes?

A. I think this one asset was. I think that's why it is highlighted. I'm pretty sure my recollection is this was on the excluded list so they kicked it back. So in --

Q. Just so we have a clear record --

A. In Exhibit 237, you see there was this one security, the last page that's highlighted, and it is called the warrant, that's the type of product it is. Usually that was not something that you can go raise cash for. And it had a

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market value of 54 million. I think that was on the excluded list and they did kick it back.

Q. With the exception of that one warrant worth 54 million dollars, is it correct that the assets reflected in Exhibit 237 were not held in LBI's clearance boxes as of the close of business on the 19th of September?

A. That's correct.

Q. And is it also correct that, again with that one exception of that one line item, the 54 million dollars, the assets reflected on Exhibit 237 were not at any time after close of business on September 19 ever included in LBI's clearance boxes?

MR. SHAW: Objection to form, foundation.

A. And I'm not 100 percent sure that there weren't other discrepancies, but as of this particular moment, when this particular file was done, this is the only one that we knew of that got kicked back. In subsequent reconciliations there could have been others.

Q. Let me try it this way. As of close of business on Friday, with that one exception we

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 have talked about, the CUSIPs that are reflected</p> <p>3 on 237 were not in Lehman's clearance box,</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. As of Monday morning, again with this</p> <p>7 one exception, the CUSIPs reflected on 237 were</p> <p>8 not contained in Lehman's clearance boxes,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Thank you. That is all I have for</p> <p>12 those documents at the moment, I think.</p> <p>13 (Exhibit 253, document Bates stamped</p> <p>14 BCI-EX-S-00018190 through 191 marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. Ms. Denig, you have in front of you</p> <p>17 what has been marked as Exhibit 253, which is a</p> <p>18 two-page document I'll identify for the record as</p> <p>19 bearing the Bates range BCI-EX-S-00018190 through</p> <p>20 91.</p> <p>21 If you'd just take a moment to</p> <p>22 familiarize yourself with that and let me know</p> <p>23 when you have finished doing so.</p> <p>24 OK. Do you see below the --</p> <p>25 Mr. Hraska's emoticon?</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Is that what it is called?</p> <p>3 Q. I believe so. It is the first time I</p> <p>4 have had a chance to say "emoticon" on the record</p> <p>5 anywhere.</p> <p>6 It is an e-mail from you, Ms. Denig,</p> <p>7 to John Rodefelf at Barclays, Wednesday, September</p> <p>8 24th.</p> <p>9 A. Yes.</p> <p>10 Q. With a re: line "Just to summarize."</p> <p>11 Can you explain to me the context in</p> <p>12 which you sent this e-mail to Mr. Rodefelf,</p> <p>13 please?</p> <p>14 A. Yes. Jim asked me to follow up with</p> <p>15 the clearance folks to find out if, in fact, we</p> <p>16 did pledge this particular CUSIP to Barclays.</p> <p>17 They didn't have it on their books anywhere, and I</p> <p>18 didn't have it as a discrepancy on my</p> <p>19 reconciliation with John.</p> <p>20 So we went to the clearance folks, who</p> <p>21 was this guy Ed Steffens. He went -- which is the</p> <p>22 original one. He said this to Jim, which is</p> <p>23 basically a reflection of what was in each box for</p> <p>24 these three CUSIPs, so he was saying 074, there</p> <p>25 was nothing in the box. In 636 we had 20 billion,</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 210 in the box and nothing in the other two.</p> <p>3 I was telling him in this e-mail that</p> <p>4 we already did pledge to him, which isn't</p> <p>5 reflected anywhere else in the e-mail, that at 70</p> <p>6 million, 210, and that we had additional 200 -- 20</p> <p>7 million, 210 in the box.</p> <p>8 Q. Do you know at which point these</p> <p>9 CUSIPs were pledged to Barclays?</p> <p>10 A. For the 70 million, 210, it was done</p> <p>11 on -- it could have been done on a combination of</p> <p>12 the 18th and the 19th, because ultimately my list</p> <p>13 ended up being combined and I only knew of one</p> <p>14 list, so I combined those as could have been</p> <p>15 delivered on either date. Though we could -- it</p> <p>16 could be looked to see where.</p> <p>17 Q. And that answered my question with</p> <p>18 respect to the 70 million. The 20 million figure?</p> <p>19 A. Yes.</p> <p>20 Q. Is that the same answer? Was it</p> <p>21 pledged on either the 18th or the 19th?</p> <p>22 A. No, it was not. It was still as of</p> <p>23 September 24 sitting in the DTC box, 22 -- 636,</p> <p>24 which is LBI's DTC box location.</p> <p>25 Q. At any point did that CUSIP get</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 transferred or pledged to Barclays?</p> <p>3 MR. SHAW: Objection, foundation.</p> <p>4 A. I can't be sure.</p> <p>5 Q. To the best of your knowledge, was it</p> <p>6 ever pledged or transferred to Barclays?</p> <p>7 A. I think so.</p> <p>8 Q. And when do you believe it was pledged</p> <p>9 or transferred to Barclays?</p> <p>10 A. On the 29th or the 30th.</p> <p>11 Q. Thank you. That is all I have about</p> <p>12 that document.</p> <p>13 (Exhibit 254, document Bates stamped</p> <p>14 BCI-EX-S-18206 with attachment marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. Ms. Denig, I have handed you what has</p> <p>17 been marked as Exhibit 254, which is a one-page</p> <p>18 e-mail having the Bates range BCI-EX-S-00018206,</p> <p>19 and it has an attachment that was produced to us</p> <p>20 in native form, and the place holder is</p> <p>21 BCI-EX-S-00018207.</p> <p>22 My question to you is a simple one,</p> <p>23 Ms. Denig: Do you know what this document is?</p> <p>24 A. It looks like a dump of information</p> <p>25 that was in our DTC boxes as of 9/24 based on what</p>

1 D. DZIEMIAN

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----x

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14 DEPOSITION OF DANIEL DZIEMIAN

15 New York, New York

16 March 4, 2010

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 28628

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know.

A. Okay.

Q. As you see, you have Kathy as our court reporter. She's going to try and take down everything we say today, so it's important that you answer in a manner that she can actually reflect on the transcript. So affirmative oral answers instead of nods or shakes of heads are helpful.

A. Okay.

Q. Try not to talk over each other. It'll happen at some point in the deposition, but if you let me finish my question before you give me your answer, that will be helpful.

Also, in the unlikely event I have a question that Trish wants to object to, it will allow her to get that on the record as well.

If you don't understand one of my questions, please let me know. I'll be happy to try and rephrase it. Okay?

A. (Witness nods.) Yes.

Q. That's an example of a nodding as opposed to a verbal answer.

And if you do answer a question, I'll

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assume that you have understood it. Is that fair?

A. Yes.

Q. For how long, sir, were you employed at Lehman?

A. Since July of 2000.

Q. What was your title when you were first hired at Lehman?

A. Vice president.

Q. Did you have a particular specialty? Were you vice president of something?

A. The clearance area. Purchase and Sales and Options.

Q. Purchase and Sales and Options?

A. Yes.

Q. Was that, sir, your title until you joined Barclays in 2008?

A. No. I was promoted to senior vice president.

Q. Were you in the same area, sir?

A. I had held a few different positions at Lehman prior to September of 2008.

Q. Could you, from July 2000 onwards, could you tell me what those positions were,

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please?

A. One was being a project manager in the Equity Middle Office. One was the manager of the Business Analyst Group. One was the manager of the Client Reporting Group. One was managing the Neuberger Berman correspondent clearing business, and that was in addition to the clearance responsibilities involving Purchase and Sales and Options.

Q. From which period time, sir, did you have responsibility for the Purchase and Sales of options?

A. It was when I first joined Lehman and then right before the integration.

Q. Okay. So from July 2000 until?

A. Probably two years.

Q. Sometime in 2002?

A. Likely.

Q. And seems like you picked up responsibility for that area again sometime in 2008, is that accurate?

A. Probably 2006.

Q. In 2006 were you promoted to senior vice president, sir?

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A. That happened the year before.

Q. So in 2005, you were senior vice president, correct?

A. Yes, to my recollection. It might have been 2004 or -- or, yes, I would say 2005.

Q. So, from 2006 onwards, you were senior vice president with responsibility in the clearing area for Purchase and Sales and Options, correct?

A. Yes, and for Neuberger Berman correspondent clearing.

Q. Okay. Thank you.

Focusing on the time period from 2006 onwards --

A. Uh-huh.

Q. -- and leaving to one side the Neuberger Berman issue --

A. Yes.

Q. -- and your responsibilities, can you tell me on a day-to-day basis what were your responsibilities in that role?

A. Primary responsibilities involved exception management. It was basically reconciliation responsibilities for all of the

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equity and fixed income exchange-traded instruments across all of the exchanges and also for the options that were traded in the listed markets and cleared through the OCC.

Q. What was exception management?

A. Basically it's just a comparison of what you process internally versus what you clear at the street level, and any differences are considered exceptions that need to be resolved.

Q. Does that mean it was your responsibility to compare Lehman's internal records with the records of third parties such as the OCC?

A. From a trade processing standpoint, yes.

Q. Can you describe for me that reconciliation process, sir? In particular, how often did the reconciliation process particularly with the OCC take place?

A. Every day.

MS. BLOOMER: Objection to form.

Q. Was that something you personally were responsible for, sir?

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A. My team was.

Q. And you had oversight responsibility, correct?

A. That's correct.

Q. The systems that, the internal Lehman systems, sir, that you were reconciling with the OCC systems?

A. Yes.

Q. What were the names of the internal Lehman systems?

A. I'm not sure I can give you all of them. It was TMS, ADP. Those were basically the processing systems. And data output from both the OCC and TMS and ADP was run through an internal application called Libra, also known as BPSA. That's how our trade breaks were produced every day.

Q. What's a trade break, sir?

A. That's a -- that's a situation where you have a trade processed either internally and you did not have a clearance record to match that at the OCC level or vice-versa.

Q. The TMS system, sir, what information about LBI's options would be retained in the TMS

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system?

A. It would be -- that's basically the trade processing system. So that's the trade facility, the trade storage facility, and also the trade routing mechanism that sends trades to our vendor-based system which was the ADP, or now known as Broadridge.

Q. Can you give me an example of the types of data about an option that would be stored in TMS?

A. All of the data elements would be quantity, price, buy or sell side, trade date, settlement date, whether there was any commission, the principal, whether there were any S.E.C. fees or any additional fees, and then the end net money on a particular transaction.

Q. What's the end net money?

A. That would be principal minus any of the fees or principal plus commissions on any of the fees. Depends on whether it was a buy or a sell.

Q. Would the TMS system also show whether an option was in or out of the money?

A. No, it would not.

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Q. Is there a system at Lehman that would show that information?

MS. BLOOMER: Objection. Lack of foundation.

A. There is a system at the Broadridge level which would determine whether an option was in and out of the money.

Q. Broadridge is the successor system to ADP, sir?

A. Well, it's just basically been a name change. ADP is also -- they're one and the same. You'll hear me say ADP. I'm talking about Broadridge, which is the new name.

Q. When did the name change from ADP to Broadridge?

A. That I don't know. I can't remember that.

Q. Was it sometime after you joined Barclays?

A. I believe it was before.

Q. Sticking with TMS for the moment, sir, would the data about options and TMS also include data about whether an option was for LBI's proprietary trading or whether it was for

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<p>1 D. DZIEMIAN</p> <p>2 you list for me, please, sir, the data relating</p> <p>3 to options that is stored in ADP?</p> <p>4 A. I don't understand that question.</p> <p>5 MS. BLOOMER: Objection to form.</p> <p>6 Q. Do you remember giving me a list of</p> <p>7 the information about options that was stored in</p> <p>8 TMS?</p> <p>9 A. The data field elements of the trade?</p> <p>10 Q. Yes. Do you remember that testimony?</p> <p>11 A. Yes.</p> <p>12 Q. Could you give me the same --</p> <p>13 A. I can't give you that for ADP. It's</p> <p>14 too widespread.</p> <p>15 Q. Can you tell me whether ADP has</p> <p>16 information about the quantity?</p> <p>17 A. Yes, my specific role in terms of</p> <p>18 options, we would generally rely on the PNS</p> <p>19 blotters, which would show basically all of the</p> <p>20 data field elements that I just described to you</p> <p>21 for TMS. Those would also be available on ADP.</p> <p>22 We would also particularly use functionality to</p> <p>23 view trade activity within the accounts that are</p> <p>24 affected by options processing.</p> <p>25 Q. What's a PNS blotter, sir?</p>	<p>1 D. DZIEMIAN</p> <p>2 A. It's basically a Broadridge Report</p> <p>3 that demonstrates and displays all trading</p> <p>4 activity that was processed the day before.</p> <p>5 Q. I understand that there's a lot of</p> <p>6 data in ADP, sir, that you don't have</p> <p>7 responsibility for or information about, but can</p> <p>8 you tell me, please, what data fields in ADP</p> <p>9 that relate to options are to the extent you are</p> <p>10 familiar with them?</p> <p>11 MS. BLOOMER: Objection to form.</p> <p>12 A. Again, it would be any of the</p> <p>13 necessary details and data field elements of a</p> <p>14 trade: Quantity, buy, sell, trade date,</p> <p>15 settlement date, price, blotter code, RR number,</p> <p>16 fees, S.E.C. fees, commissions, options</p> <p>17 regulatory fees, principal money, net money.</p> <p>18 Those are the ones that come to mind.</p> <p>19 Q. Is there a field in ADP that would</p> <p>20 indicate whether an option was in or out of the</p> <p>21 money?</p> <p>22 A. There's an application in ADP, as I</p> <p>23 testified earlier.</p> <p>24 Q. Which application is that?</p> <p>25 A. That would be the Opti application.</p>
Page 20	Page 21
<p>1 D. DZIEMIAN</p> <p>2 Q. Using the Opto application, sir, was</p> <p>3 it possible to run a report that would indicate</p> <p>4 whether Lehman options were in or out of the</p> <p>5 money?</p> <p>6 A. You mean positions that were held in</p> <p>7 Lehman?</p> <p>8 Q. Yes.</p> <p>9 A. It was more or less an online</p> <p>10 application. It was not report-driven.</p> <p>11 Q. Was it possible to generate a report</p> <p>12 using that application?</p> <p>13 A. By screen scraping, but we rarely did</p> <p>14 that.</p> <p>15 Q. What's screen scraping?</p> <p>16 A. It's basically taking the data from</p> <p>17 the online and conforming it into a text-based</p> <p>18 file.</p> <p>19 Q. Would the Opta application be able to</p> <p>20 distinguish between options that were held by</p> <p>21 Lehman for its own proprietary purposes and</p> <p>22 options that were held within Lehman for the</p> <p>23 benefit of customers?</p> <p>24 MS. BLOOMER: Objection to the form.</p> <p>25 A. I can't say whether it was split out</p>	<p>1 D. DZIEMIAN</p> <p>2 by customer firm or market maker.</p> <p>3 Q. Was there a field within ADP, sir,</p> <p>4 that would indicate whether an option was held</p> <p>5 for the benefit of a firm or the firm's</p> <p>6 customers?</p> <p>7 MS. BLOOMER: I'm going to object to</p> <p>8 form and to the ambiguity of the word</p> <p>9 "firm." Do you mean firm account or do you</p> <p>10 mean firm as in LBI versus an affiliate,</p> <p>11 Neil? Because I'm -- I think it's confusing</p> <p>12 until you clarify.</p> <p>13 Q. Do you understand my question, sir?</p> <p>14 A. I can tell you, as I mentioned</p> <p>15 earlier, that the classification of an internal</p> <p>16 account was based on account range for the most</p> <p>17 part. The way we had that set up internally at</p> <p>18 ADP was the way it was classified at the OCC</p> <p>19 level.</p> <p>20 Q. So ADP would reflect whether an option</p> <p>21 was held in a customer, firm or market maker</p> <p>22 account at OCC; is that correct?</p> <p>23 A. It was basically profiled at the B1</p> <p>24 level and the ADP B1s enable you to classify</p> <p>25 certain accounts as customer, as firm, and as</p>

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market maker internally based on your processing.

Q. You testified a few minutes ago, sir, a few moments ago, sir, that the classification was based on the account range for the most part?

A. Yes.

Q. Other than the account range, what was the classification of internal accounts based on?

MS. BLOOMER: Objection to form.

A. It was dependent on the account range within the BIs I mentioned.

Q. I just want to make sure I understood your earlier answer. You said that it was based on the account range for the most part. Do you really mean that it was based exclusively on the account range?

A. Yes.

Q. Thank you. Can you describe the Libra system for me, sir?

A. I'm not responsible for that system. We're basically the end-users of that, so I can't tell you the particulars of it.

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and your team continued to reconcile Lehman's internal data with the OCC data through the close of business on the 19th of September?

A. Yes.

Q. Did you consider that you and your team, sir, on the 19th of September, 2008, were in fact able to reconcile the OCC data with Lehman's own records?

A. I don't understand the question.

Q. Were you able to clear up the breaks that were highlighted by the Libra Reconciliation Report on the 19th of September, 2008?

A. Yes. To us it was business as normal.

Q. To your knowledge, sir, were there any problems with the data feeds from the OCC into Lehman's systems the week of the 15th?

A. Not to my knowledge, no.

Q. To your knowledge, sir, were there problems with the data feeds from any other third-party source into -- withdrawn.

Did you have responsibility for reconciliation of derivatives at any exchange or clearing organization other than the OCC, sir?

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Basically, at a high level, it's a comparison engine that compares the data, as I mentioned earlier, that's cleared at the OCC level versus what's internally processed and provides an Exception Report based on the trading activity and the clearance activity at OCC level.

Q. Was it the Libra system, sir, that you and your team would use to reconcile the internal Lehman data with the OCC data on a daily basis?

A. Libra did that reconciliation.

Q. And once you had that reconciliation, sir, what did you do with that?

A. We reacted to all of the exceptions. We worked closely with the listed options middle office to clear any and all breaks that resulted from prior day processing.

Q. Did you do that on a daily basis, sir?

A. Yes.

Q. Did you continue to do that reconciliation in the week of September 15, 2008?

A. To my recollection, yes, we did.

Q. Is it your recollection, sir, that you

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A. No, I did not.

Q. Did you have any role with respect to margin at the OCC, sir?

A. Margin was not part of my responsibility.

Q. Do you know, sir, whether or not the -- withdrawn. Do you know whether or not LBI traded options other than through the OCC?

MS. BLOOMER: Objection to form.

A. My area of responsibility was for listed options. I can't say whether there was any other peripheral activity going on.

Q. Other than --

A. Other than listed options that cleared through the OCC that I was responsible for.

Q. Who did you report to in the period that we've been discussing, '06 through '08?

A. Neal Ullman. N-E-A-L U-L-L-M-A-N.

Q. And Mr. Ullman reported up to whom, if you know?

A. Alastair Blackwell.

Q. In September of 2008, sir, who were the members of the team that reported up to you?

A. You want me to list them individually?

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1 D. DZIEMIAN
2 you either needed to say yes or no to become an
3 at will employee of Barclays.
4 Q. Was that e-mail sent around before the
5 22nd of September, 2008?
6 A. I'm not a hundred percent sure.
7 Q. Prior to receiving that e-mail, sir,
8 did you have any understanding that there may be
9 an agreement between Barclays and Lehman?
10 A. I'd say so, yes.
11 Q. Can you tell me what that
12 understanding was prior to receipt of the e-mail
13 you have just testified about?
14 A. I can't exactly recall what my
15 understanding at that time was.
16 Q. Okay. I understand that it
17 happened --
18 A. It's a long time ago.
19 Q. -- several months and years ago, sir,
20 but sitting here today, can you give me the best
21 recollection you have of what your understanding
22 was prior to receiving the e-mail about the
23 offer of employment from Barclays, what the
24 agreement or potential agreement between Lehman
25 and Barclays may be?

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1 D. DZIEMIAN
2 Q. In preparing for your deposition
3 today, sir, did you look at any documents?
4 MS. BLOOMER: You can answer.
5 A. Can you clarify what you mean by
6 "documents"?
7 Q. Yes. Did you look at any e-mails or
8 pieces of paper --
9 A. I thought I had testified earlier that
10 I didn't look at e-mails, but I did look at --
11 MS. BLOOMER: That was a different
12 question. He was asking you for about what
13 you did in preparing for your declaration.
14 Now he's asking what you did in preparing
15 for your deposition, which he hasn't asked
16 you who you met with yet, but so it's a
17 different question now and you can answer
18 the question.
19 THE WITNESS: All right.
20 MR. OXFORD: Thanks, Trish.
21 A. The general reconciliation documents
22 that had been prepared throughout the time
23 period after September 22.
24 MS. BLOOMER: You don't have to tell
25 him what documents you looked at. You can

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1 D. DZIEMIAN
2 MS. BLOOMER: Objection. Asked and
3 answered.
4 A. It would be speculative on my part
5 to -- to let you know how I think I felt back
6 then, when I truly can't remember.
7 Q. Okay. Just so we're not talking past
8 each other, sir, I wasn't asking how you felt.
9 I was asking what information you had.
10 Does that change your answer?
11 A. No, it doesn't.
12 Q. Do you recall, Mr. Dziemian, being
13 asked at any point prior to September 22 to
14 provide information to Barclays in connection
15 with a potential deal between Lehman and
16 Barclays?
17 A. I do not recall being asked.
18 Q. Do you recall being asked to give any
19 information to anyone at Lehman with the
20 understanding that it was to be passed to
21 Barclays in connection with a potential deal
22 between Lehman and Barclays, again, in the same
23 timeframe, prior to September 22, 2008?
24 MS. BLOOMER: Objection to form.
25 A. Not to my recollection.

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1 D. DZIEMIAN
2 just tell him yes or no to the question.
3 THE WITNESS: Okay.
4 Q. Did any of those documents that you
5 reviewed in preparation for your deposition,
6 sir, refresh your recollection of the events
7 that are recorded in those documents?
8 A. No.
9 Q. Who did you meet with to prepare for
10 your deposition, sir?
11 MS. BLOOMER: You can answer.
12 A. As I recall, I met with Trisha from
13 Boies Schiller, there were a couple of other
14 Boies Schiller representatives that I can't
15 recall their names at this time, and I believe
16 Alan was there.
17 MS. BLOOMER: He may have been.
18 THE WITNESS: Right. Alan Kaplan.
19 Q. Outside of meetings with the lawyers
20 you have just identified, sir, did you meet with
21 anybody else or talk to anybody else in
22 connection with the preparation for your
23 deposition today?
24 A. No, I did not.
25 Q. Mr. Dziemian, were the LBI systems

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2 that you were familiar with capable in September
3 of 2008 of providing a report of all of LBI's
4 options positions at the OCC?
5 MS. BLOOMER: Objection to form.
6 A. Yes, I would say.
7 Q. Which systems would you use, sir, in
8 September 2008 if you were asked to provide such
9 a report?
10 A. Before the 22nd? After the 22nd? The
11 whole month?
12 Q. After the -- sorry, before the 22nd of
13 September 2008. The Lehman systems I'm asking
14 about, sir, not the Barclays systems.
15 A. Okay. We would have used ADP and we
16 would have used OCC.
17 Q. And would the ADP Report, sir, would
18 that report contain, or could it contain, the
19 list of information you gave me earlier that is
20 contained in the TMS system?
21 MS. BLOOMER: Objection to form.
22 A. We're talking about two different
23 reports, right? So when we were talking about
24 TMS, we were talking about trade summaries, so
25 there was information such as price, there was

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2 A. Yes.
3 Q. -- for the moment, sir, would that
4 report be able to distinguish between account
5 numbers?
6 A. I'm not sure I understand that
7 question.
8 Q. Let me try and ask a better question.
9 Would it be possible to run an ADP
10 Report for account numbers reflecting customer
11 positions?
12 MS. BLOOMER: Objection to form.
13 A. Yes, we would have the ability to
14 separate that by customer, firm and market
15 maker.
16 Q. In September 2008, while at Lehman,
17 sir, would you also have the ability to separate
18 that report by accounts that were held for
19 Lehman affiliates?
20 MS. BLOOMER: Objection to form.
21 Accounts that were held for Lehman
22 affiliates? Objection to form.
23 A. The affiliates would be included in
24 the customer area of the report.
25 Q. Were any affiliates included in the

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2 information such as buy, sell, and there were
3 fees and principal.
4 When you're talking about a Position
5 Report, the main criteria or data field elements
6 of those particular reports would be the
7 account, whether it was long or short, the
8 description of the option, and potentially a
9 closing price.
10 Q. Would that Position Report also have
11 data about the quantity of the --
12 A. Yes.
13 Q. -- option, sir?
14 A. That would be the long or short value.
15 Q. And what information would be
16 indicated in the account field, sir, of such a
17 report?
18 MS. BLOOMER: Objection to form.
19 A. For the internal ADP Report, it would
20 be the account number. At the OCC level, it
21 would be in which particular account that was
22 held, whether it be customer, firm or market
23 maker.
24 Q. Focusing in on the internal ADP
25 Report --

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2 firm or market maker areas of the report?
3 A. I'm sorry, can you repeat that?
4 Q. Sure. Were any Lehman affiliates
5 included in the firm or market maker areas of
6 the ADP Report?
7 A. The only affiliate that would have
8 been included in firm would be LBSF.
9 Q. Why was LBSF included in the firm
10 account range?
11 A. It was sometime before September 2008
12 they were considered to be a subordinated
13 affiliate and were thereby able to be treated as
14 a firm account.
15 Q. What does it mean that they were
16 considered to be a subordinated affiliate?
17 MS. BLOOMER: Objection.
18 A. I don't know what it means from the
19 legal standpoint.
20 Q. I'm not asking. I understand you're
21 not a lawyer, sir. I'm asking from your
22 standpoint, what does it mean to you?
23 A. From my standpoint, it means that
24 LBSF, from that point forward, was to be
25 considered and treated as a firm account and

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thereby would hold positions at the firm level in the OCC and, similarly, would be classified on the ADP system as being in the firm account range.

Q. Was there any way in the ADP system, to your knowledge, sir, to distinguish between affiliate and non-affiliate customers?

MS. BLOOMER: Objection to form.

A. Not without including name and address in the reports, which we did not do.

Q. Would it be possible to run a report in ADP that distinguished between affiliate and non-affiliate customers, sir?

MS. BLOOMER: Objection. Asked and answered.

A. Are you asking would it be possible today? Would it be possible back then? Would it be possible ever?

Q. All of my questions are directed towards the period in September prior to September 22, 2008, sir.

A. I'm not sure if it would have been possible.

Q. Can you explain what you meant by your

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earlier answer that referenced including name and address of customers in the ADP Report? What did you mean by that?

A. The information from ADP was extracted from an options trade date stock record. The only information on the stock record would be account number and what the basic position was held, long, short, security ID, security description. It did not include name and address.

Q. Would it be possible using the name and address of the customer in the ADP Report to distinguish in September 2008 between affiliate and non-affiliate customers?

MS. BLOOMER: Objection. I think you are misunderstanding his testimony.

A. I don't recall ever attempting to include name and address, so I can't answer the question.

Q. Based on your knowledge of the system, sir, are you able to tell me one way or the other whether you think it would be possible to run a report in September 2008 from ADP that would distinguish between affiliate and

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non-affiliate customers?

MS. BLOOMER: Objection to form.

Calls for speculation.

A. If you're asking my opinion in this age of technology, of course.

MR. OXFORD: We've been going about an hour. You want to take a five-minute break?

MS. BLOOMER: Sure.

(Recess; Time Noted: 10:32 A.M.)

(Time Noted: 10:46 A.M.)

BY MR. OXFORD:

Q. Mr. Dziemian, did Lehman affiliate customers have unique account numbers?

MS. BLOOMER: Objection.

A. Can you just clarify the question? When you say "unique account numbers," do you mean each -- if you can clarify the question.

Q. Did each affiliate have a unique account number, sir?

A. Each account within the affiliate range had a separate and unique account number.

Q. Tell me about the affiliate account range, sir.

A. I can't really say more than, from a

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chart of accounts standpoint, I believe there were certain accounts that were designated as affiliate-related account ranges.

Q. And if you had the chart of accounts, sir, that reflected the designation of account ranges as affiliate-related, would you then be able to run a report in ADP that printed off the positions, as we've described, for those affiliates?

MS. BLOOMER: Objection to form.

A. Are you talking about all positions or are you talking about just option positions?

Q. Just options positions.

A. If you had the criteria of what accounts you wanted to run that query on, yes, you can then do that.

Q. And it's your understanding, Mr. Dziemian, that affiliates of LBI had certain designated account ranges?

A. That is my understanding.

Q. The Positions Report, sir, that you run from ADP in order to get the information that you've just testified to, the position, the description, the quantity, et cetera, of the

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2 options, how long would it take to run such a
3 report?
4 MS. BLOOMER: Objection.
5 A. I can't really answer how long it
6 would take.
7 Q. Would it take days, sir?
8 A. No, it would not take days.
9 Q. Would it take less than one day, sir?
10 A. Yes, it would take less than one day.
11 Q. Would it take less than half a day?
12 A. Yes, it would take less than a half a
13 day.
14 Q. Would it take less than four hours?
15 A. Let's say around four hours.
16 Q. You testified before the break about
17 the RISC application, sir. Do you recall that
18 testimony?
19 A. I do.
20 Q. You said that there was some other
21 system that was called RISC or related to RISC
22 that wasn't an application. Can you tell me
23 about that system, sir?
24 A. What was known as the RISC system in
25 terms of my area of responsibility was the Rolfe

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2 do it on the beginning of the next day based on
3 prior day processing. So it's a T1 or a trade
4 date plus one process. And no, it would not be
5 the same because the Libra BPSA reconciliation
6 that I spoke about earlier is exception-based,
7 so that would just show you your exceptions. If
8 you wanted to see your actual holdings, you
9 would then do the reconciliation internally
10 versus OCC.
11 Q. Would you get a specific report from
12 the OCC, sir, to reconcile against the ADP
13 Report?
14 A. There is an entire suite of reports on
15 the OCC that are available to you. We would use
16 Positions Report.
17 Q. What information is contained in the
18 OCC Positions Report?
19 A. Most of what I had mentioned earlier.
20 I can't recall every data field, but it would
21 typically be the account that it's held in,
22 whether it be customer, firm, market maker; it
23 would be the quantity; it would be the strike
24 price; it would be whether it's long or short,
25 the description, maturity date, symbol.

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2 & Nolan futures system that was used to support
3 options processing for one of the Lehman
4 affiliates.
5 Q. Which affiliate, sir?
6 A. LBIE.
7 Q. Again, before the break, sir, you said
8 that if you wanted to provide a report of LBI's
9 options positions, you would use ADP and OCC.
10 Do you remember that testimony, sir?
11 A. I do.
12 Q. Tell me about the OCC data and systems
13 it would use.
14 A. Well, what we would do is we would --
15 MS. BLOOMER: Objection to form.
16 A. We would use the internal ADP
17 information and reconcile that versus the actual
18 OCC information.
19 Q. In doing so, sir, would you
20 essentially be replicating the reconciliation
21 process that your team did on a daily basis at
22 the end of the trading day?
23 MS. BLOOMER: Objection to form.
24 A. Well, first of all, we don't do the
25 reconciliation at the end of a trading day. We

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2 Basically those are the primary data field
3 elements. There might be more, but I don't know
4 what they are offhand.
5 Q. Would the OCC Position Report have the
6 market price, sir?
7 A. I'm not sure if it does. It might
8 have the closing price. I'm not sure a hundred
9 percent.
10 Q. Would it be possible to run a report
11 from ADP of LBI's options positions that
12 included the closing price field?
13 MS. BLOOMER: Objection to form.
14 A. The Options Trade Date Stock Record
15 Report that I mentioned earlier does include
16 what is known as an ADP house price, so that
17 could be included in that.
18 Q. What's --
19 A. You have to understand there are
20 various sources of prices.
21 Q. Sure. What's the ADP house price,
22 sir?
23 A. That's basically the vendor system or
24 the vendor that ADP would use, and that's where
25 they would get their price information from.

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<p>1 D. DZIEMIAN</p> <p>2 Q. Which vendor, if you know, sir?</p> <p>3 A. I don't know. The primary vendor</p> <p>4 would be IDSI, but they probably use a host of</p> <p>5 others.</p> <p>6 Q. You mentioned a suite of reports that</p> <p>7 were available from the OCC, sir. Apart from</p> <p>8 the Positions Report that you have testified to,</p> <p>9 what other reports are available from the OCC?</p> <p>10 A. A couple that come to mind. It would</p> <p>11 be an In The Money Report. There's also, within</p> <p>12 the OCC Encore application, the ability to</p> <p>13 search clearance activity based on clearing</p> <p>14 number. There are Assignment Reports that come</p> <p>15 from OCC.</p> <p>16 Those would be the ones that</p> <p>17 immediately come to mind.</p> <p>18 Q. What's an In the Money Report, sir?</p> <p>19 A. That's a report that basically shows</p> <p>20 you whether the option that you're holding at</p> <p>21 the OCC is in or out of the money.</p> <p>22 Q. Is it difficult to run these reports</p> <p>23 from the OCC system, sir?</p> <p>24 MS. BLOOMER: Objection to form.</p> <p>25 A. Which reports exactly are you talking</p>	<p>1 D. DZIEMIAN</p> <p>2 about?</p> <p>3 Q. Let's say the -- start with the</p> <p>4 Position Report.</p> <p>5 A. No, I wouldn't say it's difficult.</p> <p>6 Q. How long would it take you to run an</p> <p>7 OCC Position Report such as the one that you</p> <p>8 have described to me?</p> <p>9 MS. BLOOMER: Objection to form.</p> <p>10 A. To just run the report?</p> <p>11 Q. Yes.</p> <p>12 A. Less than an hour.</p> <p>13 Q. In what format does the report come</p> <p>14 in, sir? Is it an Excel spreadsheet?</p> <p>15 A. You can put it into an Excel</p> <p>16 spreadsheet, but we typically would put that in</p> <p>17 a PDF.</p> <p>18 Q. The In the Money Report, sir, how long</p> <p>19 would that take to run?</p> <p>20 A. The same. Less than an hour.</p> <p>21 Q. What's an Assignment Report?</p> <p>22 A. That shows you all of the option</p> <p>23 positions that you are assigned on, meaning a</p> <p>24 contra-broker has opted to early-exercise those</p> <p>25 options.</p>
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<p>1 D. DZIEMIAN</p> <p>2 (Exhibit 670A, a document bearing</p> <p>3 Bates Nos. BCI-EX-00013187, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. Mr. Dziemian, I've handed you what I</p> <p>6 have marked as Exhibit 670A, which is an e-mail</p> <p>7 with a Bates range BCI-EX-00013187.</p> <p>8 A. Okay.</p> <p>9 Q. And an attachment, which is a few</p> <p>10 pages long.</p> <p>11 Now, you're not a sender or recipient</p> <p>12 of this e-mail, sir. Do you see that it's</p> <p>13 titled "Long Positions in Short File"?</p> <p>14 A. I see -- I'm sorry, what?</p> <p>15 Q. The subject line is "Long Positions In</p> <p>16 Short File"?</p> <p>17 A. Yes, I do see that.</p> <p>18 Q. In your experience, based on your time</p> <p>19 at Lehman, sir, do you know what a reference to</p> <p>20 long positions in short file might be?</p> <p>21 MS. BLOOMER: Objection.</p> <p>22 A. I have no idea what it is.</p> <p>23 Q. It says, "Attached is the -- just the</p> <p>24 TIPS," T-I-P-S, "portion of the short file that</p> <p>25 was sent to us." Do you know what the TIPS</p>	<p>1 D. DZIEMIAN</p> <p>2 portion of a short file is?</p> <p>3 MS. BLOOMER: Objection to form and</p> <p>4 foundation.</p> <p>5 A. Are you asking me do I know what TIPS</p> <p>6 are, or are you asking me do I know what this</p> <p>7 file is?</p> <p>8 Q. I'm asking you if you know what TIPS</p> <p>9 are, first of all.</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 A. It's a Treasury product. It's an</p> <p>12 inflation product.</p> <p>13 Q. Do you know which system, sir, the</p> <p>14 attachment to this e-mail is produced from?</p> <p>15 MS. BLOOMER: Objection. Lacks</p> <p>16 foundation.</p> <p>17 A. No, I do not.</p> <p>18 Q. Mr. Dziemian, I've handed you what has</p> <p>19 previously been marked in these depositions as</p> <p>20 Exhibit 554. Do you have that in front of you,</p> <p>21 sir?</p> <p>22 A. I do.</p> <p>23 Q. It's an e-mail and a large attachment.</p> <p>24 The subject line of the e-mail is "Net Long</p> <p>25 Options 9/18." Do you see that?</p>

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<p>1 D. DZIEMIAN 2 is an hour difference. 3 So, in answering your question, you 4 said less than an hour? 5 Q. Right. 6 A. I can't deduce that from these 7 e-mails. 8 Q. Because you think the OCC is on 9 central time? 10 A. That's correct. 11 MS. BLOOMER: Objection to form. 12 Q. So it may -- 13 MS. BLOOMER: Lacks foundation. 14 Q. Other than that one distinction, sir, 15 are you able to tell me whether or not, based on 16 this e-mail, the OCC provided the requested 17 information to Barclays within two hours of its 18 request? 19 MS. BLOOMER: Objection to form. 20 Lacks foundation. 21 Are you asking him to tell you 22 anything other than read you this document, 23 Neil? 24 MR. OXFORD: I think he has my 25 question.</p>	<p>1 D. DZIEMIAN 2 MS. BLOOMER: Lacks foundation. 3 A. Well, the way I would see it is, it 4 was asked for at 3:47, and presuming that 3:47 5 is New York time and the response came from 6 Sheila at the OCC at 4:41, I would say it was 7 fulfilled within at least less than three hours. 8 Q. Why three hours, sir? 9 A. With the hour difference, it's sort of 10 throwing me off a little bit. 11 Q. So an hour difference from 4:41 is 12 5:41 P.M., sir? 13 A. Right. 14 MS. BLOOMER: Objection. 15 Q. I'm just curious as to how you get the 16 three hours -- 17 MS. BLOOMER: Objection. 18 Q. -- from 3:47 P.M. to 5:41 P.M. 19 MS. BLOOMER: Objection. Is that a 20 question or are you just noting that you're 21 curious? 22 Q. How do you get from 3:47 P.M. to 5:41 23 P.M.? 24 A. I'm not sure. So let's say less than 25 two hours it seems as though it was fulfilled.</p>
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<p>1 D. DZIEMIAN 2 Q. That's all I have for that exhibit. 3 (Exhibit 671A, a document bearing 4 Bates Nos. OCC0036756 through 758, with 5 attachment OCC0036758-0001 through 1357, 6 marked for identification, as of this date.) 7 Q. Mr. Dziemian, I've handed you what I 8 have marked as Exhibit 671A. Take a look at 9 that document and let me know whether you've 10 seen it before. 11 A. Same as the previous, where I don't 12 recall specifically, but I am copied on the 13 e-mail so I must have seen it at some point. 14 Q. Okay. Looking at the report that's 15 attached to the e-mail, sir, are you able to 16 tell me anything about that report? 17 MS. BLOOMER: Objection to form and 18 lacks foundation. 19 A. It looks a heck of a lot like the last 20 report I just looked at, so same answers. 21 Q. In your experience with Lehman, sir, 22 have you ever seen -- have you seen this kind of 23 report before? 24 MS. BLOOMER: Objection to the form. 25 A. Are there two reports in here or is</p>	<p>1 D. DZIEMIAN 2 this just one report? I see that there's a blue 3 separator separating the accounts, market maker. 4 In my experience in options clearance, 5 yes, I have seen a report like that before. 6 Q. In what circumstances have you seen 7 such a report, sir? 8 MS. BLOOMER: Objection to form. Now 9 we're talking about exactly this report or a 10 report like this? Which is what he 11 testified to. 12 MR. OXFORD: I think my question is 13 just fine, Trish. 14 A. This would be a report that's 15 available on the OCC suite of reports. 16 Q. In that case, could a report such as 17 this report attached to the e-mail at 671A have 18 been run by Lehman at any time the week of the 19 15th of September, 2008? 20 MS. BLOOMER: Objection to the form. 21 A. Yes, I would say so. 22 Q. Does that answer also apply to the 23 report that is attached to the previous Exhibit 24 654A, sir? 25 MS. BLOOMER: Objection to form.</p>

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A. Again, that would have been available in the suite of reports.

Q. Mr. Dziemian, I've handed you a document marked previously as Exhibit 555 in these depositions. Take a moment to review that and let me know if you have seen this before.

A. So, as far as the e-mail, again, not specifically, but I was added to the chain so at some point I must have seen it.

Q. Did you review this document in preparation for your deposition, sir?

A. Not that I recall.

Q. Do you see the top e-mail in the chain, sir, is from Frank Pearn?

A. Francis Pearn, yes.

Q. Do you know Mr. Pearn?

A. Just the name. I don't know what his responsibilities are or her responsibilities -- or, his. Fine.

Q. Was Francis Pearn a legacy Lehman employee, to your knowledge?

A. I don't know that.

Q. I'll represent to you that Francis is a man. So Mr. Pearn sends to Tim Stack an

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e-mail on Sunday, the 21st of September, at around 7:30 Greenwich Mean Time and he copies you on that e-mail, correct?

A. I am copied, yes.

Q. Do you know who Mr. Stack is?

A. I believe Tim is the head of futures trading for Barclays Capital.

Q. Mr. Pearn writes, and he signs it Frank, which I think gives us the clue --

A. Right, I just noticed that.

Q. -- that I might not be off-base.

He writes, "Tim here are the OCC statements for LBI as of 9/22 reflecting our cash and securities collateral held for LBI Account 074." Do you see that?

A. I do.

Q. He then goes on to write, "Dan and Craig provided these and can answer your questions." Do you see that?

A. I do see that.

Q. Did you provide the attached OCC statements to Mr. Pearn?

A. I do not recall providing those, no.

Q. Does this e-mail reflect your --

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sorry. Does this e-mail refresh your recollection that you had some involvement in providing information, directly or indirectly, to Barclays in the week leading up to September 22, 2008?

A. No, it does not.

Q. Were you working that Sunday, 21st, sir?

A. As I recall, I was.

Q. Was that routine for you? Were you normally in the office on a Sunday?

MS. BLOOMER: Objection to form.

Assumes facts not in evidence.

A. There was occasions where I was working on Sunday, whether it be in the office or remotely.

Q. Were you in the office on Sunday, 21st, or working remotely?

A. As I recall, I was in the office.

Q. Mr. Pearn goes on to say that, "Dan and Craig can answer your questions." Do you see that?

A. I do.

Q. Do you recall whether or not Mr. Stack

D. DZIEMIAN

asked you any questions in connection with this e-mail and the attachment?

A. I do not recall.

Q. When was the first time you spoke to Mr. Stack?

A. I don't recall speaking to Mr. Stack.

Q. Ever?

A. I don't recall any conversations with Mr. Stack.

Q. Do you recall any conversations with anybody with Barclays in the week prior to September 22, 2008?

A. I do not recall.

Q. The report that's attached to the e-mail at Exhibit 555, sir, is that one of the reports that's part of the suite of reports you testified was available from the OCC systems?

A. So there are a couple of reports. So the account summary by CMO, yes. That would be something that the Clearance Team would look at. The collateral inventory by CMO, again, that was -- that was included in the suite of reports, but not for the Clearance Team.

Q. Does "CMO" stand for clearing

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<p>1 D. DZIEMIAN</p> <p>2 MS. BLOOMER: Same objection and</p> <p>3 instruction.</p> <p>4 A. I'd say that -- I'd say that it was an</p> <p>5 idea that was confirmed and agreed by mutual</p> <p>6 parties across both operations, Finance and</p> <p>7 Regulatory.</p> <p>8 Q. Who in Finance was involved in that</p> <p>9 decision?</p> <p>10 A. I can't recall specifically who.</p> <p>11 Q. Who in Regulatory was involved in that</p> <p>12 decision?</p> <p>13 A. Again, I can't recall specifically</p> <p>14 who.</p> <p>15 (Exhibit 674A, a document bearing</p> <p>16 Bates Nos. BCI-EX-00297544, with attachment,</p> <p>17 marked for identification, as of this date.)</p> <p>18 Q. Mr. Dziemian, I've handed you what I</p> <p>19 marked as Exhibit 674A, which is a document</p> <p>20 bearing the Bates number BCI-EX-0027544.</p> <p>21 A. Yes.</p> <p>22 Q. Have you seen this document before,</p> <p>23 sir?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Did you create this document, sir?</p>	<p>1 D. DZIEMIAN</p> <p>2 A. Yes, I did.</p> <p>3 Q. Can you tell me what it is?</p> <p>4 A. It's an extract summary of the bridge</p> <p>5 account reconciliation across the LBI processing</p> <p>6 system and the Barclays Capital ADP processing</p> <p>7 system.</p> <p>8 Q. And which extract is it, sir? What</p> <p>9 information is extracted from?</p> <p>10 A. It's the information related</p> <p>11 specifically to the affiliate activity.</p> <p>12 Q. What's the reference in the second</p> <p>13 column, sir, to LBI ADP 012?</p> <p>14 A. That's the client number. That's</p> <p>15 Lehman Brothers' ADP client number. The ADP has</p> <p>16 certain client numbers for all of its clients.</p> <p>17 That happened to be the LBI client number, as</p> <p>18 224 is the Barclays Capital ADP. That was the</p> <p>19 new ADP system that we had set up.</p> <p>20 Q. And can you explain to me what are the</p> <p>21 numbers under the ADP Debit and Credit columns,</p> <p>22 the LBI ADP Debit and Credit columns, what do</p> <p>23 those represent?</p> <p>24 A. Just the LBI side do you want to know?</p> <p>25 Q. Yes, for now.</p>
Page 92	Page 93
<p>1 D. DZIEMIAN</p> <p>2 A. Okay. That represents the activity</p> <p>3 that was processed versus the actual affiliate</p> <p>4 client accounts, and the end result in the</p> <p>5 bridge accounts, in the denoted bridge accounts,</p> <p>6 is basically the offset of all of that activity.</p> <p>7 So in the example of number 1, "LBIE</p> <p>8 customer exercise and assignment liquidations,"</p> <p>9 that amount in total over the period of time</p> <p>10 beginning September 23 had been processed versus</p> <p>11 those accounts with all of the settlements</p> <p>12 occurring to the BCI entities. So all of that</p> <p>13 activity was funded by Barclays Capital. That</p> <p>14 was really the main reason, primary reason, for</p> <p>15 the bridge account methodology that we came up</p> <p>16 with.</p> <p>17 Q. Did you make the entries reflected in</p> <p>18 this exhibit on LBI's ADP record?</p> <p>19 MS. BLOOMER: Objection to form.</p> <p>20 A. I don't think I understood that</p> <p>21 question. Can you please ask it again, or may I</p> <p>22 see it again?</p> <p>23 MR. OXFORD: Yes. Can you read it</p> <p>24 back, Kathy.</p> <p>25 (Record read.)</p>	<p>1 D. DZIEMIAN</p> <p>2 MR. OXFORD: Let me try and clean that</p> <p>3 up a little bit, because it was vague.</p> <p>4 Q. There are a series of debits and</p> <p>5 credits listed under the heading "LBI ADP 012,"</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Do those debits and credits reflect</p> <p>9 entries that you made on LBI's ADP records?</p> <p>10 A. On LBI and BCI.</p> <p>11 Q. I understand that, sir. I'm focusing,</p> <p>12 for the purposes of these questions, on the LBI</p> <p>13 ADP records.</p> <p>14 A. Yes, understood, but I would qualify</p> <p>15 that that you need to see both sides of the</p> <p>16 picture.</p> <p>17 Q. I understand. Okay. Can you tell me</p> <p>18 what purpose you had, sir, in making entries on</p> <p>19 LBI's ADP records?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 Where did you come up with the word</p> <p>22 "records"? I'm not sure what that means, or</p> <p>23 where you -- did he use the word "records"</p> <p>24 at any point?</p> <p>25 A. Are you talking about the LBI</p>

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processing system? The ADP processing system?
The LBI ADP processing system?

Q. Yes.

A. Is that what you're talking about?

Q. Yes.

A. The reason we needed to record the entries in that manner is because, as I had previously testified, there were no longer settlement bank capabilities or settlement facilities in OCC or in DTC 074, which was formerly linked with OCC 074, and the settlement bank that was formerly linked to OCC 074 was changed from LBI to BCI.

So ordinarily the entries that you see posted in these bridge accounts, the general offset would have been either a bank account on LBI or a settlement depository account on LBI, but those no longer existed as of September 22. They were all re- or switched and repointed to Barclays Capital. So all of that settlement activity was happening in Barclays Capital as of September 23.

Q. And were the entries reflected in Exhibit 674A, are those intended to account for

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Barclays' belief or your belief, sir, that that settlement activity was attributable not to Barclays, but to LBI?

MS. BLOOMER: Objection to form, foundation, and I'm instructing the witness not to answer to the extent that it would require him to explain an understanding that he formed through discussions with Barclays' counsel.

A. So you asked me if it's my understanding that -- can you repeat that, please?

(Record read.)

A. Well, there's no real easy answer to that, so the settlement obligations of the OCC became the responsibility of Barclays Capital. All of the underlying events and activities at the OCC were funded by Barclays Capital. It was related to LBI affiliate activity.

The balances you see here are the end results of all of that activity. So the net total across the BCI ADP 224 processing system, that was the net funding that Barclays Capital had to put up for the affiliate activity related

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to LBI affiliates.

Q. And is the purpose of this bridge account, sir, to charge the net cost of closing out those affiliate options positions back to the LBI estate?

MS. BLOOMER: Objection. Lack of foundation.

A. I'm not exactly sure what the disposition of those balances are at this time.

Q. That wasn't quite my question.

MR. OXFORD: Can you read back my question?

(Record read.)

MS. BLOOMER: I'm going to object to the form and I'm going to again instruct you not to answer the question to the extent it would require you to disclose the substance of discussions you had with Barclays' counsel.

A. I will say that the bridge account reconciliations were established and put in place to reconcile all of the activity and to designate each of the specific and unique LBI affiliates that all of the activity was

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attributable to.

Q. I appreciate that answer, sir. Don't think I don't when I ask my question for a third time, but with respect, I don't think I got an answer to it.

(Record read.)

MS. BLOOMER: I'm going to object. I'm going to give the same instruction and asked and answered already twice now.

A. Maybe that's answered in paragraph 14 of the declaration.

Q. I can read your declaration, sir, and reading paragraph 14, does that mean the answer to my question is yes?

MS. BLOOMER: Objection to the form. He's tried three different ways to answer the question now. If you don't like any of those three answers, he doesn't have to keep trying again.

MR. OXFORD: With respect, I think he's tried three different ways not to answer my question -- actually, maybe a fourth now.

THE WITNESS: No, I am trying to

1 D. DZIEMIAN
2 answer your question.
3 MS. BLOOMER: Asked and answered.
4 Objection.
5 Q. Is the answer to my question "yes,"
6 sir?
7 MS. BLOOMER: Asked and answered.
8 Objection.
9 (Record read.)
10 A. That was not the purpose of the bridge
11 accounts. The purpose of the bridge accounts
12 was to perform a comprehensive reconciliation
13 based on the activity of the affiliate activity
14 at OCC 074.
15 Q. Is the effect of the bridge account,
16 sir, to charge back to the LBI estate the net
17 cost of closing out the affiliate accounts that
18 are reflected on Exhibit 674A?
19 MS. BLOOMER: Objection to form.
20 A. I would say that those balances would
21 serve as a basis for that.
22 Q. Do you know, sir, why the
23 reconciliation is with the LBI estate, not the
24 individual LBI affiliates?
25 MS. BLOOMER: Objection to form and I

1 D. DZIEMIAN
2 date.
3 Q. Who in the middle office were you
4 working with on this project?
5 A. I don't recall any one specific
6 individual.
7 Q. Do you know who made the decision,
8 sir, for the orderly liquidation of the
9 remaining affiliate positions, as you've
10 described?
11 MS. BLOOMER: I'm going to object and
12 I'm going to instruct you not to disclose
13 the substance of discussions with Barclays'
14 counsel.
15 A. I can't recall any one individual
16 making that decision. I believe it was more a
17 consensus across the board.
18 Q. Do you know if any affiliate options
19 were closed out prior to October 17, 2008?
20 A. Not closed out in the form of
21 liquidation, but by way of the natural
22 assignment exercise activity at the OCC, which
23 was processed, again, versus the bridge accounts
24 I mentioned earlier.
25 Q. Could those options that were not

1 D. DZIEMIAN
2 instruct you not to answer to the extent it
3 requires you to disclose the substance of
4 discussions with Barclays' counsel.
5 A. Yes, I didn't understand that
6 question. Can you just please read that back?
7 (Record read.)
8 A. When you say "with the LBI estate,"
9 I'm not sure what that means.
10 Q. Withdrawn, actually. Were you
11 involved in the close-out of the affiliated
12 options, sir?
13 A. The remaining positions in OCC 074?
14 Q. Yes.
15 A. Yes.
16 Q. Can you tell me what your role was?
17 A. In conjunction with the listed
18 options, middle office and the business, we
19 performed an orderly liquidation of the
20 remaining positions that were held for
21 affiliates in OCC 074.
22 Q. When did that orderly liquidation
23 begin, sir?
24 A. As I recall, it was the expiration
25 Friday in October. I don't recall the specific

1 D. DZIEMIAN
2 closed out, other than through exercise of
3 assignment, have been closed prior to October
4 17, 2008?
5 MS. BLOOMER: Objection to form:
6 A. Are you asking me whether it was
7 possible?
8 Q. Yes, I am.
9 A. Yes, it was possible.
10 Q. Do you know why the affiliate options
11 were not closed out prior to October 17, 2008?
12 MS. BLOOMER: Objection to form and I
13 instruct you not to disclose the substance
14 of discussions with Barclays' counsel. If
15 you have another basis for answering the
16 question, you can answer.
17 A. As I recall, everyone just wanted to
18 be very clear on the action plan and what was
19 necessary after evaluating the situation and the
20 possible exposures.
21 Q. What do you mean by "the possible
22 exposures"?
23 A. Just generally what was left in the
24 OCC account in terms of the affiliates.
25 Q. Do you know, sir, whether anybody at

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Barclays took instructions from the affiliates as to the exercise for close-out of their options?

A. I am not aware of any.

Q. Mr. Dziemian, do you have an understanding of the different types of options customers that Lehman had in September 2008?

A. Yes.

Q. What different types of options customers did Lehman have in September 2008?

A. You're asking for general classification?

Q. Yes.

A. In the customer account at OCC 074, we held positions for the LBI affiliates, our institutional client base, our prime services client base, our PIM client base, and in OCC 273, we held positions for our Neuberger Berman client base.

Q. The references to prime services, was that, sir, to your prime broker customers?

A. Yes.

Q. Was there a way on September 19, 2008, sir, to determine the relative volume of options

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trading across the different categories of customers that you just described to me?

MS. BLOOMER: Objection to form.

A. To my recollection, there was little or no volume throughout the entire week of 9/15 through 9/19.

Q. By that answer, sir, do you mean to communicate, sir, that there were no additional options placed or exercised during that timeframe?

A. No. No. Exercising assignments are completely different. When you're talking about trading volumes, you're talking about executions at the exchange level. That activity virtually stopped as of September 15. Exercise and assignments continued as normal throughout that week into the expiration weekend and from 9/22 and forward, as normal.

Q. Would it be possible to determine on September 19, 2008 the volume of positions, existing positions, held on behalf of each of the types of customers that you've just described to me?

MS. BLOOMER: Objection to form.

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D. DZIEMIAN

A. Are you asking whether it would be possible now or was it possible then or when would it be possible?

Q. Well, would it have been possible on the 19th of September?

A. Yes. By developing any type of an Excel type macro, we could have done that.

Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me?

MS. BLOOMER: Objection to form.

Vague and ambiguous.

A. I can't tell you what the exact percentages across each of those division is in terms of holdings was.

Q. Sure. I understand that. Please understand me. I'm not asking for the exact percentages. My question is whether you're able to give me an indication of what those percentages may be, understanding that you might not be able to do it to the decimal point.

MS. BLOOMER: Objection to form.

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Vague and ambiguous.

A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account.

Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me?

MS. BLOOMER: Objection to form.

A. It would be -- it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer.

Q. Okay. Thank you. I appreciate that.

If you could have paragraph 15 of your declaration in front of you, please, sir.

A. Yes.

Q. In paragraph 15, you describe a bridge account relating to non-PIM 074C customer options, correct?

A. Yes, that would be for Prime Services and Institutional.

Q. Your second sentence says, "Barclays has continued to work with the SIPA Trustee for

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1 D. DZIEMIAN
2 the LBI liquidation and its consultants to
3 settle up through LBI with these customers
4 whenever possible. There are currently
5 unsettled entries relating to certain non-PIM
6 customer options in the LBI bridge account." Do
7 you see that?
8 A. Yes, I do.
9 Q. Do you know how many unsettled entries
10 there are in that bridge account, sir?
11 A. There are only seven or eight
12 positions left.
13 Q. Do you know what the value of those
14 positions is, sir?
15 A. Not exactly, but the net is definitely
16 under a million dollars.
17 MR. OXFORD: Can we go off for a
18 second?
19 (Recess; Time Noted: 12:44 P.M.)
20 (Time Noted: 12:50 P.M.)
21 (Exhibit 675A, a document bearing
22 Bates Nos. BCI-EX-00297545, with attachment,
23 marked for identification, as of this date.)
24 BY MR. OXFORD:
25 Q. Mr. Dziemian, is the ADP system able

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1 D. DZIEMIAN
2 (Record read.)
3 Q. Mr. Dziemian, did you mean to say that
4 you would have a problem in excluding OTC
5 derivatives or you would not have a problem?
6 A. Would not.
7 Q. Thank you. You have in front of you
8 what I have marked as Exhibit 675A, sir, do you
9 see that?
10 A. I do.
11 Q. Do you recognize that document?
12 A. I do.
13 Q. Can you tell me what it is, please?
14 A. The report details a reconciliation of
15 074 activity that occurred after -- or, from
16 September 23 forward and related back to
17 positions that were formerly held in the LBI
18 processing system.
19 The entries in question involve cash
20 in lieu for the most part, where cash was
21 settled in lieu of securities and also stock
22 loan activity by way of the OCC program that was
23 in effect at Lehman.
24 Q. Did you rely on this document in
25 creating your declaration, sir?

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1 D. DZIEMIAN
2 to distinguish between exchange-traded
3 derivatives and over-the-counter derivatives?
4 And when I'm asking about the ADP
5 system, I'm talking about as used at Lehman in
6 September 2008.
7 A. OTC derivatives is not my realm of
8 responsibility. In terms of options on the ADP
9 system, they would typically be set up in a
10 separate identifying range by ADP. They call it
11 a security number. So it would actually be
12 within that range that you would have an option
13 set up.
14 Q. Would you have any problem in creating
15 an ADP Report and excluding from that report
16 over-the-counter derivatives?
17 MS. BLOOMER: Objection to form.
18 A. Yes, and the way we would do that is
19 by using an ADP Options Trade Date Stock Record
20 Report, which OTC derivatives would not be
21 included on.
22 MR. OXFORD: Could you read back my
23 question and answer? I just want to make
24 sure we were not talking past each other
25 there.

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1 D. DZIEMIAN
2 A. No.
3 MR. OXFORD: Mr. Dziemian, I don't
4 have any further questions for you at this
5 time. I appreciate your time and
6 cooperation. Thank you.
7 THE WITNESS: Thank you.
8 MR. OXFORD: And for the record, I
9 don't think counsel for the other parties
10 have any questions.
11 MR. DAKIS: The Committee has no
12 questions.
13 MS. CRAWFORD: I have no questions.
14 (Time Noted: 12:56 P.M.)
15 oOo
16
17
18
19
20 DANIEL DZIEMIAN
21
22 Subscribed and sworn to
23 before me this day
24 of 2010.
25

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF PAUL EXALL

10 New York, New York

11 Thursday, August 27, 2009
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16
17
18
19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24380
22
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25

P. EXALL - HIGHLY CONFIDENTIAL
you what's going to happen here but basically I'm going to ask you a series of questions. You're under oath. You're going to answer the questions as best you can.

At some point during the deposition you might hear your attorney voice an objection to either preserve an objection or challenge a question that I might ask. That doesn't relieve you of the obligation to answer the question. You still have to answer the question. I might change the question in response to his deposition -- to his objection but unless he instructs you not to answer you still have to answer the question. Okay?

A. I understand.

Q. In that regard if I ask a question that's a little bit confusing or I misuse a term that you folks use or an abbreviation that you folks use, please correct me and ask me to clarify the question. I want to have a clear question so I can get a clear answer, okay?

A. Okay.

Q. Did you prepare at all for today's

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deposition?

A. Yes, I did.

Q. How did you do that?

A. I obviously met with counsel and prepared over the course of the past week. And I reviewed insofar as I could the documentation and events around the time of the acquisition insofar as I could recall them and reference them.

Q. Okay. Did any of those documents refresh your recollection about anything in connection with this litigation?

A. Yes, they did. Yes.

Q. Which documents are those?

A. I don't recall. I mean, I read through a lot of old e-mail correspondence and things like that that I have in relation to the matter. And I had discussions with people that assisted me in the preparation of the spreadsheet.

Q. And you don't have any specific document that refreshed your recollection about that?

A. Nothing specific.

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Q. Okay. You're aware that you've been asked to appear by Barclays as a 30(b)(6) witness on specific topics, correct?

A. Yes.

Q. Okay. Well, let's start off with the 30(b)(6) notice. I'm going to hand you a copy of a document marked as Exhibit 279B which is entitled Debtor's First Rule 30(b)(6) Deposition Notice to Barclays on Issues Pertaining to Accrued '08 FY Liability Under the Asset Purchase Agreement.

And my question is have you ever seen this deposition notice?

A. I have.

Q. Fair to say you reviewed this in preparation for today's deposition?

A. I have reviewed this, yes.

Q. And if you look on Schedule A which is the third page you'll see you've been designated as a 30(b)(6) witness in connection with bonus and severance payments made to former Lehman employees, right?

MR. GREEN: Object to the form of the question. That's not all the

P. EXALL - HIGHLY CONFIDENTIAL
schedule says.

MR. HINE: Okay.

Q. But in general you're here to testify about bonus and severance payments made to former Lehman employees, right?

A. I'm here to represent that -- what's represented on the schedule prepared in respect to this deposition.

Q. Okay. Now, that schedule is the schedule -- the spreadsheet referenced in this Schedule A?

A. I believe it to be, yes.

Q. And then a couple days ago we received a replacement or an updated spreadsheet so you understand that that's the subject of today's deposition as well.

A. I do.

Q. Okay. We'll get to that later. I'm done with that exhibit.

Well, before I finish on that did you undertake any investigation in connection with being a 30(b)(6) witness?

A. What do you mean by that?

Q. Well, did you look into any of the

P. EXALL - HIGHLY CONFIDENTIAL
issues that are embodied in that spreadsheet in preparation for today's deposition?

A. I prepared the spreadsheet, itself.

Q. Okay.

A. So I understand the items on it and can testify to those.

Q. Okay. Could you just give me a little background about yourself? You're a Barclays employee; is that correct?

A. Barclays Capital employee, that's correct.

Q. And how long have you been with Barclays?

A. As a permanent employee I've been with Barclays since April 2000. Prior to that I consulted with Barclays Capital from around June 2008.

MR. GREEN: You mean 1998? Excuse me.

Q. I think you just lost me.

A. 1998, sorry.

Q. All right. Just so I have it, you consulted with Barclays from June 1998 to

P. EXALL - HIGHLY CONFIDENTIAL
April 2000?

A. That's correct.

Q. And from April 2000 you've been a permanent employee of Barclays; is that right?

A. That's right.

Q. And in what capacity are you employed by Barclays?

A. Currently my job title would be head of compensation analytics across investment banking and investment management.

Q. How long have you held that position?

A. I would estimate four -- three, four, five years.

Q. Okay. And what were you before that?

A. I've been a director in HR for several years. The job role, itself, has existed since -- it sort of -- it's become a formal role so to speak. I've been doing this particular function for Barclays Capital, for BGI, and for Barclays Wealth, over a period of time since I joined the HR department.

Q. Okay. And is it fair to say that

P. EXALL - HIGHLY CONFIDENTIAL
you've been in the HR department since you came to Barclays?

A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR.

Q. Did any of your work prior to July 21 involve compensation issues?

A. Insofar as it related to finance matters and books and records of Barclays Capital, yes.

Q. Well, let me -- let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position?

A. The primary responsibilities that I assume are -- I work for Michael Evans as the global head of HR across investment bank, management. My primary duties involve -- and this is the best way I can describe it -- the liaison between Barclays Capital HR and -- or

P. EXALL - HIGHLY CONFIDENTIAL
IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management.

Q. Okay. So --

A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth.

Q. You keep saying different entities here. BGI is what?

A. Yes. Just to explain the structure of what is known as investment banking and investment management -- if you look in the books -- in the published report of the accounts of Barclays PLC there's investment banking and investment management and what's called GICB and then there's the

1 P. EXALL - HIGHLY CONFIDENTIAL
2 group center. Investment Banking and
3 Investment Management comprise the three
4 businesses run by Mr. Diamond. Barclays
5 Capital, Barclays Global Investors, now
6 subject to the sale to Blackrock, and Barclays
7 Wealth.

8 Q. And your primary role is with that
9 group?

10 A. That's correct.

11 Q. And other groups you have a role
12 or not?

13 A. No.

14 Q. Okay. So did I understand you
15 correctly that you interface between that
16 group, the one run by Mr. Diamond, with
17 respect to compensation matters to the
18 committee of the board who approves
19 compensation; is that right?

20 A. Yes. I do not liaise directly
21 with them. We go through obviously our own
22 management who represent us on that committee.
23 And I liaise with the group HR function who
24 again represent them and others on that
25 committee.

1 P. EXALL - HIGHLY CONFIDENTIAL
2 Q. Okay. So Mr. Evans is -- and what
3 is his title?

4 A. Mr. Evans is -- amongst other
5 things he's responsible for several
6 departments. I'll probably to get this wrong
7 but in my capacity he's global head of human
8 resources across global investment global
9 management.

10 Q. So you report to him?

11 A. I do.

12 Q. Do you report to anyone else
13 directly?

14 A. Not directly.

15 Q. Okay.

16 MR. GREEN: Bill, I just want to
17 without giving a long speech say that
18 when you're getting background from Paul
19 of his understanding of the
20 organization, I mean this is just
21 background from him. He's not speaking
22 as a 30(b)(6) deponent in terms of
23 taking a position for the company on
24 what the organizational structure is.

25 MR. HINE: Fair enough.

1 P. EXALL - HIGHLY CONFIDENTIAL
2 MR. GREEN: All right.

3 BY MR. HINE:

4 Q. So, Mr. Exall, could you explain
5 to me -- you're aware that this whole
6 proceeding and these depositions have to do
7 with the sale -- a transaction between Lehman
8 and Barclays that closed on or around
9 September 22nd, 2008, correct?

10 A. I understand that, yes.

11 Q. Okay. Could you just describe for
12 me generally any role you played in connection
13 with that transaction through -- what I'm
14 asking about is any role you played in the
15 negotiations of the transaction or the closing
16 or anything else related to it.

17 MR. GREEN: Object to the form.

18 You may answer.

19 A. I played no role whatsoever in any
20 negotiations whatsoever.

21 Q. Okay. So -- and, again, I just
22 want to get a sense of your general background
23 here. You were not involved in discussions
24 concerning the compensation provisions that
25 later made their way into the Asset Purchase

1 P. EXALL - HIGHLY CONFIDENTIAL
2 Agreement; is that right?

3 MR. GREEN: Objection to the form
4 of the question. You may answer.

5 A. Could you repeat the question,
6 please?

7 Q. You were not involved, am I right,
8 in the negotiations or discussions concerning
9 the compensation provisions that later made
10 their way into the Asset Purchase Agreement in
11 this case; is that right?

12 A. That is right. I was not
13 involved.

14 Q. Okay. And how did you learn about
15 the compensation provisions that are embodied
16 in the Asset Purchase Agreement?

17 MR. GREEN: Object to the form.

18 A. I was passed a copy of the
19 purchase agreement by some colleagues in the
20 finance department.

21 Q. Okay.

22 A. And reading that and -- I came to
23 understand that there were some provisions in
24 there in relation to compensation.

25 Q. Okay. And were you passed -- when

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were you passed that agreement?

A. I can't recall the exact date but it would have been on or around the 22nd of September or shortly thereafter.

Q. Okay. And did you need to consult that agreement to do your job from then on?

A. It was a point of reference, yes.

Q. Okay. Were you passed any other documents related to compensation in connection with this transaction?

A. Yes.

Q. Like what?

A. I requested to see a copy of the schedule referred to in the APA.

Q. Okay.

A. The sale agreement.

Q. Okay.

A. And I was passed what was represented to me as being that schedule.

Q. Okay. Anything else?

A. I don't recall getting any other specific sale-related documentation in that regard, no.

Q. Okay. Have you ever seen a copy

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of the first amendment to the Asset Purchase Agreement?

A. I don't believe so, no.

Q. Okay. Fair to say you don't have any use for that document in connection with the work you've performed with respect to compensating former Lehman employees?

MR. GREEN: Object to the form of the question.

MR. HINE: It was a bad question.

Let me try again.

Q. Is it fair to say you haven't had need to consult with the first amendment of the APA in connection with the work you performed with respect to compensation for former Lehman employees?

A. I did not consult it.

Q. Okay.

A. Consequently, I do not know if I needed to.

Q. Okay. Fair enough.

Have you ever seen a document called a clarification letter that was agreed to between Barclays and Lehman in connection

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with the Asset Purchase Agreement?

A. I don't recall specifically seeing that document. I know of its existence but I don't recall actually either seeing it or having read it in any great detail.

Q. Okay.

A. If I did see it.

Q. Do you have any understanding of its purpose?

A. No. Not particularly.

Q. Do you have any understanding of how it relates in any way, if at all, to compensation issues?

A. No.

Q. Okay. Is it fair to say that you've been able to do your job with respect to compensation of former Lehman employees without consulting the clarification letter?

A. I believe so.

Q. Okay. And I believe you said earlier that you prepared the spreadsheet that we're going to be discussing here today?

A. I did.

Q. Okay. And is that something that

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you prepared in the normal course of your employment?

A. It was prepared in the normal course of business in support of various requirements from PriceWaterhouseCoopers as part of their annual audit as well as the ancillary or related regulatory filings that they may or may not have had to prepare.

Q. So when was it prepared?

MR. GREEN: Object to the form.

You mean the spreadsheet? When was the original spreadsheet prepared?

MR. HINE: Well, we'll just wait till I get to the spreadsheet. I just want to get some background here.

Q. We'll put that question aside.

So when did you learn of the Lehman/Barclays sale transaction?

A. I learned -- I don't recall actually specifically learning when it occurred. I was aware that the initial discussions were being held in New York amongst various parties in relation to the original form of the transaction whereby, I

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you speculate you would have talked about.
But do you recall any discussions between any
of your senior Barclays management about what
was being discussed or contemplated in
connection with compensation-related issues
concerning the Lehman Barclays proposed
transaction?

MR. GREEN: These are discussions
between Paul and senior management
you're asking about.

MR. HINE: Yes.

A. Sorry. So let me just be clear.
You're asking do I know of any discussions
that my senior management may have had with
Lehman Brothers?

**Q. No, no, no. I'm asking did you
have any conversations with senior management
during that week, September 15th through
September 22nd, about the compensation issues
that were being discussed or considered in
connection with the Lehman Barclays
transaction?**

A. I don't recall anything specific.
I do know that the initial sale agreement had

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been concluded by the time I had come to New
York and was beginning to assist Mr. Evans in
whatever he needed me to do. And it was my
understanding that the transaction was closed
at that point.

**Q. And at that point do you recall
the date you were --**

A. I look back -- I think it was on
or around the 20th or 21st of September that I
came across. I forget the exact date but I
believe it was on or around there.

**Q. Okay. So you thought the
transaction had closed by then?**

A. It was my general understanding
that the transaction for all intents and
purposes had been completed the prior week. I
have subsequently come to understand that
there was a clarification agreement and
officially the judge may have sanctioned at a
later date. You know, the legalities for me
are neither here nor there. My understanding
is that the transaction had been concluded in
all material respects at that point.

Q. Okay. Did you have any

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understanding during that period about the \$2
billion compensation figure that appeared on
the schedule that you had referenced earlier?

MR. GREEN: Could you show him
that figure?

MR. HINE: Okay. Let's get to
the -- let's get to that.

MR. GREEN: Just so it's clear
what we're talking about.

MR. HINE: Let's get to the
schedule.

BY MR. HINE:

**Q. Mr. Exall, I'm going to hand you a
copy of a document that's previously been
marked as Exhibit 1 which is a copy of the
Asset Purchase Agreement which I think you've
been discussing. Just so you have it in front
of you. And I'm also going to give you a copy
of a document that's been marked as Exhibit 19
which I understand is the schedule that is
referenced in the APA. If you want just take
a couple minutes to refresh -- review these
documents and I'll ask you some questions.
(Document review.)**

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MR. GREEN: Are you ready, Paul?

THE WITNESS: Yeah.

**Q. Now, my previous question had to
do with the schedule. We'll call this the
9/16 schedule if you will. Do you see the \$2
billion compensation number in that schedule?**

A. I do.

**Q. Okay. Did you, during the week of
September 15th to the 22nd say, did you have
any conversations with any of Barclays senior
management about that \$2 billion comp figure?**

A. I was made aware of this schedule
during that week.

Q. Um-hum.

A. And I'm certain I would have asked
someone questions with respect of the schedule
and what I understood it -- you know, what I
needed to interpret from it. But, yes, in
general I would have had conversations with
people on this.

**Q. Okay. And who gave you the
schedule?**

A. Mr. Clackson passed me the
schedule.

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Q. And what did he tell you about it?

A. He represented this as being the schedule referred to in the APA.

Q. Okay. And you were looking down. I think -- are you looking at Section 9.1(c) of the APA?

A. That is correct.

Q. Okay. So this Exhibit 19 is the schedule -- or you understood that the Exhibit 19 is the schedule referred to in paragraph 9.1(c) of the APA, correct?

MR. GREEN: Object to the form.

A. This is a copy of the schedule that was represented to me as being the schedule referred to, correct.

Q. Okay. What did Mr. Clackson tell you about that schedule?

MR. GREEN: Object to the form.

Asked and answered. You may answer.

A. I don't recall what he told me about it. I asked him for a copy of it as part of my own reading of the relevant sections of the APA.

Q. Okay. And you had been previously

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provided a copy of the APA?

A. Yes.

Q. And who gave you that?

A. I believe Mr. Gary Romaine gave me a copy of the APA.

Q. Okay. And why did he give it to you?

MR. GREEN: Object to the form.

A. He understood there to be compensation related matters that I would probably be -- need to be aware of.

Q. Okay. And I take it you reviewed the APA after receiving a copy of it.

A. In general, yes. I can't testify to having read it in any great depth. I read I think the sections in relation to me and probably, to put a word on it, skimmed the rest.

Q. Okay. I'm not trying to be tricky here but is it fair to say you focused on Section 9.1 of the APA and probably skimmed the rest of it?

MR. GREEN: Object to the form.

You may answer.

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A. Yes. I think that would be reasonably accurate.

Q. Okay. Well, let's just take a look at 9.1 for a minute. If you wouldn't mind turning to 9.1(a). 9.1(a), as I understand it, has to do with Barclays offering employment to certain individuals who are defined as transferred employees.

Do you see that definition in there?

A. I see the term transferred employee referred to.

Q. Okay. Is that a term you're familiar with?

A. No.

Q. Well, I guess the reason I'm asking is you're charged with supervising compensation issues with respect to transferred employees, right?

MR. GREEN: Object to the form of the question. I think that mischaracterizes his prior testimony.

A. I would say that part of my responsibility is in relation to compensation

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of the former Lehman Brothers employees that Barclays Capital or Barclays acquired under the transaction. The meaning of transferred employee in the sense of this agreement or any other document I can't testify to not being a lawyer and I just have no legal understanding of that.

Q. Okay. So the term -- the defined term transferred employees is not something you use in the normal course of your business?

A. Not in the normal course of my business, no.

Q. Okay.

Do you know how many employees -- well, let's just explore this for a minute. You work on compensation issues related to former Lehman employees who transferred to Barclays, correct?

A. Compensation of former Lehman employees that came to work for Barclays.

Q. Okay. Now, do you know how many of those folks there are?

A. I recall, and I'm approximating here, that there were in excess of 10,000

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 **has been complied with by Barclays with**
3 **respect to former Lehman employees?**

4 MR. GREEN: Object to the form of
5 the question. Calls for a legal
6 conclusion.

7 A. I don't know whether this or any
8 other clause has been complied with.

9 **Q. Okay.**

10 A. I don't know what Barclays'
11 obligations are under these. What I do know
12 is that when individuals across the firm have
13 been affected by a reduction in force exercise
14 they are subject to -- for consideration to
15 severance payments in the normal course of
16 business.

17 **Q. Okay. And I believe you said that**
18 **you believe that's been done in accordance**
19 **with the former Lehman's policies?**

20 A. I believe that for former Lehman
21 Brothers employees the former Lehman Brothers
22 policy has been applied.

23 **Q. Okay.**

24 A. That's my understanding.

25 **Q. Okay. Now, this provision, 9.1(b)**

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 **doesn't refer to the schedule that we talked**
3 **about earlier, right, that September 16th**
4 **schedule?**

5 MR. GREEN: Object to the form.

6 A. I don't see any specific reference
7 to it.

8 **Q. Okay. Now, if we turn to 9.1(c)**
9 **that has to do with bonus payments, correct?**
10 **In general?**

11 MR. GREEN: Object to the form of
12 the question.

13 A. Again, I can't interpret the
14 clause. I see the word bonus, annual bonuses
15 reflected in the clause. But as to what it
16 may or may not refer to I really can't testify
17 in any legal capacity.

18 **Q. I understand. I'm not asking for**
19 **your legal interpretation. I'm asking as a**
20 **general matter as a person charged with**
21 **compensation issues and working with this**
22 **stuff. Do you have a general understanding of**
23 **what this provision (c) entails in connection**
24 **with bonuses that were to be paid to former**
25 **Lehman employees?**

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2 MR. GREEN: Object to form.

3 Do you have the question in mind?

4 THE WITNESS: I'm just re-reading
5 the clause.

6 A. Could you perhaps rephrase the
7 question?

8 **Q. Yeah. Let's try again.**

9 **What is your understanding -- and**
10 **I understand you're not a lawyer and I'm not**
11 **asking for a legal conclusion as to this**
12 **paragraph. But what is your understanding**
13 **about the amount of bonuses that are supposed**
14 **to be paid, were supposed to have been paid to**
15 **former Lehman employees who now are with**
16 **Barclays?**

17 A. I don't understand anything in
18 respect of this clause that refers to any
19 amount, quantum of bonus whatsoever.

20 **Q. Well, but it does refer to the**
21 **schedule, right?**

22 A. It refers to a schedule, yes.

23 **Q. Okay. And what did you understand**
24 **that to mean when it refers to that schedule?**

25 MR. GREEN: Object to the form of

1 P. EXALL - HIGHLY CONFIDENTIAL
2 the question. Calls for a legal
3 conclusion.

4 A. It refers to a schedule. And the
5 schedule, itself, does not have the word bonus
6 anywhere on it.

7 **Q. Okay.**

8 A. So I can't reach a conclusion as
9 to any -- in any capacity, personal, private,
10 on behalf of the company, as to what quantum
11 of bonus may or may not be referred to in this
12 clause.

13 **Q. Okay. I understand. I'm not**
14 **asking for a legal interpretation. But in the**
15 **course of preparing the spreadsheet that we're**
16 **going to talk about and your work in**
17 **connection with compensation related to these**
18 **former Lehman employees, what did you**
19 **understand the \$2 billion was supposed to**
20 **cover?**

21 MR. GREEN: Object to the form of
22 the question.

23 **Q. And when I say \$2 billion I'm**
24 **referring to the 2 billion in the schedule,**
25 **the September 16th schedule.**

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MR. GREEN: Object to the form of the question.

A. Again -- and to reiterate, I cannot pass a legal opinion as to what the obligations of Barclays may or may not be. It is my personal view, and that may be different to the views of Barclays or anyone else in Barclays that \$2 billion is referred to as comp. And my understanding in a personal capacity is that refers to compensation in all its forms.

Q. In all its forms. Meaning what?

A. In respect of pre-acquisition service of the former Lehman Brothers employees.

Q. What do you mean by compensation in all its forms?

A. Again, I'm speaking in my personal capacity as opposed to on behalf of Barclays. Their definition of compensation may be different than mine.

I understand personally compensation to mean any manner of awards and payments and reward to employees in general

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can answer the question.

A. I can testify to the schedule, itself, that's the subject of this deposition which reflects the compensation delivered, the wide discharge of compensation delivered to former Lehman Brothers employees in respect of their pre-acquisition service to Lehman Brothers.

Q. But, Mr. Exall, you have no understanding of what that \$2 billion was supposed to encompass in connection with compensation to former Lehman employees?

A. I don't see it defined in the agreement and I can't interpret it.

Q. Okay. When you were asked to prepare the schedule, were you told that it should total up to \$2 billion?

A. No.

Q. Were you told what the amount is that in aggregate were supposed to have been paid in any form of compensation to former Lehman employees?

A. No.

Q. Do you have any understanding of

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that would encompass things like salary, annual bonus, deferred stock, deferred cash. Benefits. Pensions. Recruit -- you know, I would say that there's no standard definition of what is termed as compensation in either the accounting environment or in the human resources environment. But my personal understanding is that compensation is any form of a award delivered to or on behalf of a employee. Or to their benefit.

Q. Okay. I really didn't ask the definition of compensation. I'm trying to find out what in preparing the spreadsheet that we're going to talk about today and in your work in connection with providing compensation to the former Lehman employees, is that \$2 billion supposed to cover more than bonuses?

MR. GREEN: Object to the form of the question. I think you did ask about his understanding of the term compensation to begin with so I think the lead-in to your question was inappropriate. But, nevertheless, you

P. EXALL - HIGHLY CONFIDENTIAL
the amount of compensation that's supposed to be paid to former Lehman employees?

A. No.

Q. Further into this paragraph you see -- and I'm reading starting on the seventh line down onto the eighth line it talks about forms and proportions as are consistent with purchaser's customary practices.

And it's referring to the annual bonuses. Do you see that sentence?

A. I do.

Q. What is -- just based on your experience at Barclays, what is form and proportions -- or what is Barclay's customary practice with respect to annual bonuses?

MR. GREEN: Object to the form of the question as to the extent it calls for a legal conclusion.

A. Our customary practice prior to 2008 in terms of annual bonus awards at Barclays Capital --

Q. Right.

A. -- in general their annual bonuses were delivered in the form of either cash or

1 P. EXALL - HIGHLY CONFIDENTIAL
2 cash and stock.

3 **Q. Right.**

4 A. Whereby above a certain threshold
5 an amount of the annual bonus was deferred or
6 delivered through a stock vehicle which would,
7 based at the time, through a tax table kind of
8 approach so above a certain threshold a
9 proportion was deferred or delivered in stock
10 and beyond a certain -- another step more
11 stock was delivered.

12 **Q. Okay. And was this -- when you**
13 **said tax table you threw me there. What did**
14 **you mean there?**

15 A. Sorry. It's a term I use. I
16 shouldn't use it. We colloquially refer to it
17 as a tax table. It's in effect if your bonus
18 is X, then there is no deferral into stock.
19 If it's above a certain threshold, a certain
20 proportion of the entire bonus is delivered in
21 stock. If it's above another threshold,
22 further proportion of that bonus is delivered
23 in stock.

24 **Q. Okay. And as a general matter**
25 **what percentage of bonus is provided in stock?**

1 P. EXALL - HIGHLY CONFIDENTIAL
2 let's say, as an example, if you had a hundred
3 pounds of an amount deferred into stock,
4 vesting over four years, if -- you can either
5 have pro rata vesting which is you could take
6 a quarter, a quarter, a quarter, and 25 would
7 accrue at the end of one, 25 after -- et
8 cetera.

9 Cliff vesting means that it only
10 vests at the end of the period concerned. So
11 you'd only get the full hundred in this
12 example at the end of the fourth year.

13 **Q. And it was a custom to have a**
14 **three-year cliff vest period for stock**
15 **bonuses?**

16 A. It was our custom, yes.

17 **Q. All right. And has this changed**
18 **since 2008? You said prior to 2008.**

19 A. 2008 was a unique year for
20 compensation and we delivered at Barclays
21 Capital -- at Barclays in a different way
22 subject to a different type of arrangement.

23 **Q. Are you talking about the former**
24 **Lehman employees when you say that or --**

25 A. No. They were subject to our

1 **P. EXALL - HIGHLY CONFIDENTIAL**

2 A. In general, our customary practice
3 prior to 2008 was that any bonus -- and there
4 were regional fluctuations here based on the
5 exchange rate -- so I will quote this in
6 pounds. Any bonus below 150,000 pounds
7 sterling there was no deferral or no delivery
8 in stock. Any amounts above 150,000 pounds
9 but below 250,000 pounds of annual bonus,
10 10 percent of the entire amount was delivered
11 in stock. Any amounts over and above 250,000
12 pounds, the first 250,000 pounds were
13 delivered -- 10 percent of that was delivered
14 in stock. Any amount above 250,000 25 percent
15 was delivered in stock.

16 **Q. And this stock vested over time?**

17 A. That's correct. Subject to the
18 rules of the stock -- of the plan itself, the
19 standard practice was to cliff vest at the end
20 of a three-year period.

21 **Q. Okay. I saw that term cliff vest.**
22 **What does many mean?**

23 A. In general that means that it
24 vests in equal tranches, so to speak, so some
25 of our competitors in a stock award would --

1 P. EXALL - HIGHLY CONFIDENTIAL
2 standard practice that was employed prior to
3 this.

4 **Q. Okay. So as a general matter, and**
5 **I know there's individuals, but as a general**
6 **rule this practice -- the prior practice that**
7 **you just described was applied to the former**
8 **Lehman employees that came to work at**
9 **Barclays?**

10 A. I believe that to be the case yes,
11 in most cases, yeah.

12 (Deposition Exhibit 280B, document
13 bearing production number
14 BCI-EX-00077287, marked for
15 identification as of this date.)

16 (Deposition Exhibit 281B, document
17 bearing production number
18 BCI-EX-00115843, marked for
19 identification as of this date.)

20 BY MR. HINE:

21 **Q. Mr. Exall, I'm handing you two**
22 **exhibits. One is marked as Exhibit 280B which**
23 **is Bates stamped BCI-EX-00077287 which I**
24 **understand to be the original version of the**
25 **schedule that was provided to us. And the**

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 second document is marked as Exhibit 281B
3 which is Bates stamped BCI-EX-00115843 which,
4 Chris, I think you'll agree is the updated
5 schedule that was recently provided to us.

6 My first question, Mr. Exall, have
7 you ever seen these documents before?

8 A. Yes.

9 Q. You prepared these documents?

10 A. I did.

11 Q. Okay. I want to -- and am I
12 correct that 281B is an updated replacement
13 version of 280B?

14 A. Yes.

15 Q. Okay. Before we put away 280B
16 could you explain to me the differences and
17 why you had to update it?

18 A. Sure. 280B as you referred to
19 here was the original schedule provided around
20 the middle of July I understand. It reflected
21 what we believed to be an accurate picture of
22 the discharge of compensation to previous --
23 former Lehman Brothers employees in respect of
24 their prior pre-acquisition service.

25 It was thought to be accurate at

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 that time, although we were still
3 investigating certain items reflected on the
4 schedule. Subsequent to those investigations
5 and the correction of a couple of
6 typographical errors as well as some of the
7 text was cut off from the narrative on the
8 right-hand side of the original schedule, the
9 updated schedule reflects a more accurate --
10 an accurate picture of the discharge of those
11 compensation items as of the date it was
12 produced.

13 Q. Okay. Now, other than typos is it
14 fair to say the main differences have to do
15 with severance entries?

16 A. Yes.

17 Q. Okay. Just take a step back a
18 minute. Why was this schedule -- and I'll
19 refer to them generically now, why was this
20 schedule prepared?

21 A. The schedule was prepared in the
22 normal course of business to support the -- or
23 for production to -- primarily for production
24 to PriceWaterhouseCoopers as part of their
25 annual audit as well as any ancillary filings

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 they may or may not have had to provide as
3 part of their normal course of business as
4 auditors of Barclays.

5 Q. Okay. So this is someone from PwC
6 requested a schedule of compensation related
7 to the Lehman acquisition?

8 A. I was instructed that this would
9 be needed in support of the annual audit and
10 other related filings by my finance
11 colleagues.

12 Q. Who told you that?

13 A. Mr. Romaine.

14 Q. Romaine?

15 A. Gary Romaine.

16 Q. Okay. And he is -- what was his
17 position?

18 A. I believe -- I don't know -- I
19 can't recall his exact title but he's a
20 technical accountant in the finance
21 department.

22 Q. Okay. He's not in the HR
23 department, correct?

24 A. No, no.

25 Q. So is it correct to say that the

1 **P. EXALL - HIGHLY CONFIDENTIAL**
2 finance department requested this type of
3 schedule from your department?

4 A. Mr. Romaine requested it of me,
5 yes.

6 Q. Okay. Any other purpose behind
7 this other than to assist PwC?

8 A. No. The primary purpose of this
9 was to assist PwC.

10 Q. Any other purposes?

11 A. I think we in general in support
12 of our own internal accounting records would
13 have prepared the schedule. But the primary
14 purpose would be to support the annual audit
15 and regulatory filings that were required.

16 MR. GREEN: Bill, I'm sorry.

17 Could we go off the record for one
18 second?

19 MR. HINE: Sure.

20 (Discussion held off the record.)

21 BY MR. HINE:

22 Q. Mr. Exall, I think you had
23 something you wanted to clarify?

24 A. If you could repeat that question
25 in respect of why the schedule was prepared

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A. There was no regular requirement to update it. There were certain points of time that an update was required and as part of the -- whether it be the annual report from PriceWaterhouse or anything else in respect of what they were looking at or passing an opinion on. So there are points in time at which a schedule would have been updated and presented formally to them. I know they've had a copy I believe of this schedule. I'm not sure whether they have a copy of 281B.

Q. So when you said this schedule you meant 280B?

A. I meant 280B, yes.

Q. Okay. Now, did you start preparing a schedule in this form or like this starting in September of 2008?

A. I don't recall the exact time when we first produced the -- a first iteration of the schedule or its predecessor without guessing or consulting prior records, but what I can say is that this schedule was -- or its predecessor would have been prepared in Q4 2008.

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Q. All right. Was either 280B or 281B prepared in any way in connection with the discovery we're undertaking here in this litigation?

MR. GREEN: Object to the form of the question to the extent it calls for a legal conclusion.

A. That is not my understanding.

Q. Okay. Were you ever asked to prepare a schedule in response to discovery requests in this case?

A. No.

Q. Okay. So this is something you had -- were you ever asked to alter these schedules or modify them in any way with respect to providing discovery in this case?

MR. GREEN: Object to the question to the extent it invades communications between counsel and client.

Q. I'm not asking you any discussions you may have had with attorneys in connection with this schedule. But were you ever asked to modify this schedule that you've been -- I take it you've been maintaining this schedule

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Q. Okay.

A. During that period, yes.

Q. Okay. And it's gone on through a couple iterations between Q4 '08 and mid July of '09; is that right?

A. Of course.

Q. Okay. And the iteration following the mid July version which is Exhibit 280B, what I have in front of me as 280B -- 281B?

A. 281B, yes.

Q. Okay. Were there no iterations between these two?

A. That was the iteration.

Q. Okay.

A. We updated this Schedule 280B. It's now become 281B.

RQ MR. HINE: Okay. Chris, we're going to request copies of all these iterations going back to the fourth quarter of '08 just as part of our document requests.

MR. GREEN: We'll take that request under advisement.

MR. HINE: Okay.

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for several months now, correct?

A. That would be correct.

Q. Since fourth quarter of '08, right?

A. Yes.

Q. Were you ever asked to modify the schedule in response to anything that was taking place in this litigation here in the US?

A. Not to my recollection.

Q. Okay. Were you ever told in any way that the amount of comp at the bottom, you'll see at the bottom of 280B it totals to 1.999 billion. Could you see that?

A. Yes.

Q. Were you ever told that that number should be 2 billion when all was said and done you should get down to 2 billion at the end?

A. No.

Q. I'm not talking in connection with this litigation. I'm just asking in general. Did anyone ever tell you that the total amount of compensation should total about \$2 billion?

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A. I was asked to prepare the schedule in respect of detailing the discharge of our obligations to former Lehman Brothers employees in respect of their prior service and compensation for their prior service for Lehman Brothers. And this is what the schedule represents. It's items relating to pre-acquisition services.

Q. Okay. But were you ever told that it should be a total of \$2 billion?

A. No.

Q. Do you have any understanding of how this schedule and the compensation listed in this schedule relates to the 9/16 balance sheet or the schedule we looked at previously?

MR. GREEN: The Exhibit 19?

Q. Exhibit 19.

A. The only reference point between schedules 280B and 281B and the schedule you have as Exhibit 19 is the OBS compensation accrual line which is reflected on both 280B and 281B. The source referenced here is the APA which references the \$2 billion described as comp on Exhibit 19.

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equity?

A. I was requested by Mr. Romaine to -- for accounting purposes to estimate the stock component of any such compensation that may total 2 billion with the assumption that we applied -- oh, sorry. Let me say it again.

I was asked to estimate the stock potential of any compensation that may be represented by this 2 billion.

Q. Okay.

A. And the 300 million is an estimate based on historic norms and experience under the Barclays Capital stock deferral scheme.

Q. Is that the scheme we talked about earlier, the normal practice of Barclays?

A. That is correct, yes.

Q. Okay. And when did he ask you to do this?

A. I believe it's a technical accounting matter. And it's really a question for Mr. Romaine.

MR. GREEN: I'm sorry. Did you say when or why?

MR. HINE: Why.

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Q. Okay. So let's look at Exhibit 281B. I don't want to confuse the record here.

A. Okay.

Q. 281B is the most recent version of this schedule, right?

A. That's correct.

Q. Just so I understand what you just said, when you see on the -- OBS Compensation Accrual, OBS stands for opening balance sheet; is that right?

A. Yes. That's my understanding.

Q. Okay. And the source for the \$2 billion number is the APA, correct?

A. Yes.

Q. And by that you mean the source for the \$2 billion is Exhibit 19 that we just pointed to?

A. That's correct.

Q. Okay. So now how do you -- I just want to walk through preparing this schedule. How do you get from the \$2 billion number -- how do you break it into 17 -- into 1.7 billion in cash versus 300 million in

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MR. GREEN: Oh, I'm sorry.

A. It's a technical accounting matter in respect of how the -- my understanding is how the acquisition is accounted for in the books and records of Barclays PLC. I don't know the technical aspects behind it.

Q. Okay. Just a general question. Has this allocation between cash and equity changed at all since the fourth quarter of '08 when you first started preparing the schedule to the present?

A. Not to my recollection. Again, that would have to be something for Mr. Romaine.

Q. Okay. And again I'm happy if you tell me it's someone else's department. I'm not trying to get you to testify about things you have no knowledge about.

A. No, I understand.

Q. In the next -- could you just tell in the general structure here. You have payments -- I see payments in future and other items. Payments are cash outflows or expenses that have already taken place?

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MR. GREEN: Object to the form.

Q. That's a bad question but --

A. My understanding is that these were amounts that had been either paid in cash or awarded in equity or paid as severance at the time that this spreadsheet had been prepared.

Payable in the future I understand to be things that in most cases have not yet been paid and were due and payable at a future time through some sort of timing issue, et cetera; whereas, other items were things that were economic costs to Barclay PLC that were related to awards that had already been made.

I guess you could actually categorize the other items -- actually, the way they're represented here the ISP awards you could actually have recategorized that as payments. And payroll taxes, you could categorize that as payable in the future.

Q. I see. When I -- again, just to compare 280B and 281B I see in the first entry under Payment it says Pre -- on 281B it says Pre 22/9 Payroll Items and in 280B is says

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22/2. Is that just a typo?

A. Yes, it is.

Q. Okay. So back to 281B. What does this entry encompass?

A. There are two general components to the \$12 million I believe you're referring to.

Q. Um-hum.

A. In general, the first is a series of payments made by Barclays on behalf of former Lehman Brothers employees that were expatriates. So these are payments made to tax authorities in other jurisdictions -- or it may have been the US jurisdiction but in the UK and other international jurisdictions in respect of their pre-acquisition service.

These were liabilities that effectively would have been for Lehman Brothers but Barclays took on those liabilities and funded them and made good on those payments.

Q. These are payments to the individuals or to regulatory authorities?

A. To regulatory authorities on

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behalf of individuals.

Q. Okay. Just so I understand it, these are Lehman employees who were ex-pats at the time of the acquisition who had some regulatory obligation to foreign authorities or other authorities and Barclays paid that; is that right?

MR. GREEN: Objection to form.

You can answer.

A. That is my understanding.

Q. Okay. And how much of this 12 million is that?

A. I estimate it to be approximately \$7 million.

Q. And that money didn't go to the individuals; it went to some regulatory authority, correct?

A. That's my understanding.

Q. Okay. And then what's the balance, the 7 from the 12?

A. The balance of 5 -- as I said, there were two items. The balance of the 5 relates to payrolls that -- for former Lehman Brothers employees that were due and payable

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on and around the date of the bankruptcy.

Those payables are not going to be made. They were liabilities for the former Lehman Brothers. They were payables that were not going to be paid. My understanding was there was no cash to make them. As part of the ordinary course of business to take on those employees Barclays agreed to fund those payrolls in respect of those pre-acquisition services.

Q. Okay. Just so I understand the pool of people we're talking about, you're talking about payroll -- payroll amounts that were due to the Lehman employees who came to Barclays?

A. Yes.

Q. You're not talking about -- this does not include payroll that was owed to Lehman employees who stayed with Lehman, correct?

A. That's not my understanding.

Q. We have a double negative there.

A. Yeah. There's a double negative.

It's my understanding those

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2 amounts relate to payroll in respect to former
3 Lehman Brothers employees in respect of their
4 pre-acquisition services but these employees
5 were employees that transferred or became
6 employees of Barclays Capital.

7 Q. Okay. So it's only folks who
8 transferred to Barclays, correct?

9 A. That is my understanding in most
10 cases.

11 Q. Okay. When you say
12 pre-acquisition services, what do you mean?
13 Can I just use my colloquial term and you tell
14 me whether I'm right or wrong. Is this base
15 salary that was owed to these folks as of
16 September 22nd?

17 MR. GREEN: Object to the form of
18 the question. Do you mean --

19 Q. Well, let me back up.

20 MR. GREEN: This specific
21 component of the first entry is what
22 you're talking about?

23 MR. HINE: I'm talking about the
24 \$5 million out of the 12 million that
25 we've been talking about.

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2 MR. GREEN: Right.

3 Q. Is that what I've seen referred to
4 as base salary?

5 A. Not only. I would suggest without
6 reviewing the records in detail or
7 investigating in general, if you're talking
8 payroll, you're talking any base salary paid
9 to the individual amongst other things that
10 are payroll related.

11 Q. Like what?

12 A. Benefits, pensions. Anything that
13 may or may not -- or that may be part of an
14 individual's monthly salary or related items.

15 Q. I understand. But it's not bonus.
16 It's not annual bonuses, right?

17 A. That's not my understanding, yes.

18 Q. We've got a double negative.

19 A. My understanding is that that was
20 a payroll item and I do not believe that there
21 were any - as you term them - annual bonus
22 payments incorporated in that.

23 Q. When you say a payroll item you're
24 talking about the weekly or biweekly or
25 monthly checks that these folks were getting

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2 throughout the year.

3 A. That's my understanding.

4 Q. Okay. And so is this 5 million
5 payments to those folks up to September 22nd
6 or does it go beyond September 22nd?

7 A. I don't recall the exact dates. I
8 don't know the exact dates to which the
9 payroll related. I do know that they were the
10 payrolls that were due and payable at the time
11 that the acquisition was happening. The risk
12 was -- and this was the commercial risk --
13 that these employees that were going to come
14 to work for Barclays were not going to get
15 paid for that month by Lehman Brothers. They
16 would have had no monthly salary not being
17 employed by Barclays at that time. So this
18 was a make-good, I guess goodwill gesture by
19 Barclays to fund the payroll to ensure the
20 smooth transition into the new structure.

21 Q. Okay. So presumably most of these
22 employees have been paid August 31st and this
23 is for the period of September for which they
24 worked?

25 MR. GREEN: Objection to the form

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2 of the question.

3 A. I don't know that for certain but
4 I believe that to be the case.

5 Q. Okay. But when I see the title it
6 says Pre-September 22nd payroll items, my
7 question is does that 5 million continue these
8 payroll items all the way to the end of the
9 year or is it just for the period in
10 September? Do you understand my question?

11 A. They do not relate to any payments
12 for the rest of the year.

13 Q. Okay. So the 5 million is just to
14 bring these employees up to September 22nd; is
15 that right?

16 A. I can't testify to whether the
17 22nd of September is the exact date but what I
18 can tell you is that is for their salary and
19 related items as per a payroll that was due
20 and payable at the time in and around the
21 acquisition. So whether that was the 23rd or
22 the 25th of September I can't testify. I
23 don't know the exact dates.

24 Q. Okay. But assuming the date of
25 around September 22nd, this item, the \$5

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million, does not include payments for October, November and December for those employees; is that right?

A. That is right.

Q. Okay. The next item we see is replacement RSUs. Could you tell us what that is?

A. RSU is an acronym to stand for restricted stock units.

Q. Okay. And what are they?

A. They are effectively in general stock awards made to individuals that are restricted in the sense that they either do not vest immediately or can't be sold immediately.

Q. Okay. Now, these are a form of compensation that Lehman had previously used?

A. Yes.

Q. Okay. Did Barclays previously use these?

A. Yes, we have.

Q. Okay. Now, I see that you cite here \$11 million and I just want to read your source. It says new RSUs granted as

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replacements for ex-Lehman employees granted to them in 2008 prior to the acquisition.

So just explain to me what's going on here. This is Barclays replacing some RSUs that Lehman had previously granted to its employees?

MR. GREEN: Object to form. You may answer.

A. There was a population of people that were given stock awards by Lehman Brothers earlier in 2008. At the time of the acquisition the value of those awards had declined to zero.

Q. Right.

A. For these specific employees it was decided that as a goodwill gesture, Barclays would give restricted stock awards in respect of that zero -- that original award now valued at zero in effect to split the loss 50/50.

So as a hypothetical example if the individual had been -- received an award of stock to the value of \$100 from Lehman Brothers that had gone to zero at the time of

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the bankruptcy, Barclays' goodwill gesture in respect of that employee would have been to give them a stock award to the value of 50 in Barclays stock.

Q. So it's in Barclays stock now.

A. It's in Barclays stock but relates to the value of stock awarded prior to the acquisition by Lehman Brothers.

Q. And that's based on the value of Barclays stock as of around September '08, correct?

A. That's normal practice, yes.

Q. And does this vest over a period of time?

A. It would have, yes. I don't know the specific vesting for this particular award but that would be the normal course of events, yes.

Q. Would it be the three-year cliff vest that you mentioned earlier?

A. It may or may not have been. Often -- in many cases we will mirror the original vesting of an award at a previous employer with a replacement award. I can't

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testify to what the vesting period because I don't know it for this particular award.

Q. Okay. Well, if it vested over time, would it be entered on the balance sheet for this year?

A. Sorry. Excuse me?

Q. If it had vested over time would it be entered on the acquisition balance sheet for this year?

MR. GREEN: Object to the form of the question. You may answer if you know.

A. I believe that's a technical accounting question. I believe the answer to be yes but I can't pass an exact accounting opinion. You should refer that to Mr. Romaine.

Q. Okay. And when you say this is a goodwill gesture are you saying that Barclays wasn't obligated to do this under the APA?

MR. GREEN: Objection to the form of the question. It calls for a legal conclusion.

A. I don't know what the APA

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2 specifically obligated Barclays or anyone else
3 to do. I do know that this is a goodwill
4 gesture for those employees. That's my
5 understanding of that award.

6 Q. Okay. And are these very senior
7 employees?

8 A. I believe they are -- there are --
9 I -- hum. I would categorize them as
10 employees -- I would suggest -- my
11 recollection is actually that they're a range
12 of employees. There were some senior
13 employees and some junior employees in that.
14 I don't think that they were specifically
15 targeted as the senior group. They were a
16 group of people that had received awards at
17 Lehman Brothers.

18 Q. Whoever happened to be in the pool
19 of people who received an award.

20 A. In the specific grouping, yes.

21 Q. The next entry -- well, another
22 question on that. Why is that not in the
23 equity column, that 11 million?

24 A. I don't know.

25 Q. Do you think it should be or is it

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2 just a -- it's not paid in cash, right?

3 A. My understanding it was stock
4 awards.

5 Q. Okay. You don't know why it's
6 in --

7 A. No.

8 Q. Okay. You have to answer either
9 yes or no. If you shake your head --

10 A. Oh, sorry. I don't know why.

11 Q. The next entry is Bonus Concluding
12 Social Tax. Could you tell me what you mean
13 by social tax? What is that?

14 A. My interpretation of social tax
15 would be -- my understanding would be these
16 are any ancillary taxes that would be due and
17 payable to various regulatory authorities in
18 respect of any annual bonus payment at any
19 point in time in whatever jurisdiction they
20 have to be made in.

21 Q. So is this like withholding tax?
22 Income tax?

23 A. Not personal income tax, no.

24 Q. Oh. Just any --

25 A. Let me characterize it again.

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2 Where withholdings are required, yes, they
3 would be included in that number. It would
4 also include whatever benefits may or may not
5 be derived from any annual incentive payment
6 that is made. So I believe one of those to be
7 FICA in the US.

8 Q. Okay. So this would -- this
9 figure of 1.529 billion includes all of that
10 type of regulatory requirements, correct?

11 A. That's my understanding, yes.

12 Q. Okay. And when you say bonus
13 here, these are annual bonuses?

14 MR. GREEN: Object to the form.

15 Q. Well, let me show you another
16 document. Maybe that helps me ask the
17 question better.

18 (Pause on the record.)

19 Q. While we're trying to find the
20 document, do you see in the source it says TCR
21 27 Feb 2009?

22 MR. GREEN: 23rd Feb?

23 Q. 23 Feb.

24 A. TCR is an acronym for our internal
25 on-line compensation review system. It stands

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2 for total compensation review. The date 23
3 February 2009 relates to the date the data
4 were extracted from that system from which
5 this -- that element of the schedule was
6 prepared.

7 Q. Okay. So this is just a database
8 where you track compensation payments to
9 employees?

10 A. In effect, yes.

11 Q. Oh, okay. And would that data
12 have changed since February of '09 up until
13 the date you prepared this?

14 MR. GREEN: Object to the form.

15 A. I don't believe so. The
16 compensation round had closed at that point.

17 Q. Okay.

18 A. Whilst there may be movements of
19 items subsequent to that, I think that data
20 extract is accurate.

21 Q. When you say the compensation
22 round had been concluded, is there like an
23 annual schedule for the award of bonuses at
24 Barclays?

25 MR. GREEN: Object to the form.

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2 A. Yes. There's a normal cycle that
3 is followed.

4 Q. Okay. So are you saying that
5 they've been awarded by February 23rd and they
6 probably didn't change between then and now?

7 A. At the 23rd of Feb the cash
8 amounts would have been distributed through
9 the payroll. The equity awards, the value
10 thereof would have been fixed.

11 Q. Okay.

12 A. The equity awards I don't believe
13 had been formally made in terms of the amount
14 of stock units at that point. But the value
15 of those awards had been fixed.

16 Q. But you're relatively confident
17 that there's been no substantial changes from
18 February 23rd to the present.

19 A. Yes, I am.

20 Q. Okay. Let me hand you a copy of
21 an exhibit that's been previously marked as
22 216 which is a copy of a contract between
23 Barclays and Mr. Lowitt. I'm just going to
24 use this as an example so I don't expect that
25 you're familiar with the terms but if you want

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2 to just take a minute to take a look at it.

3 (Document review.)

4 MR. GREEN: Bill, while he's
5 looking at I should say that as I'm sure
6 you know this entire deposition is
7 designated highly confidential.

8 MR. HINE: Highly confidential.

9 MR. GREEN: And don't expect any
10 redesignation because it's all about
11 comp.

12 MR. HINE: I understand. I
13 understand.

14 MR. GREEN: So it will remain that
15 way.

16 MR. HINE: Well, I think our
17 agreement is we'll treat it as all
18 highly confidential and you guys let me
19 know if have you any re-designations.

20 MR. GREEN: Right.

21 MR. HINE: So that's fine.

22 MR. GREEN: Right.

23 BY MR. HINE:

24 Q. Mr. Exall, have you had a chance
25 to look at this document?

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2 A. Yes.

3 Q. And my question is Mr. Lowitt is
4 apparently awarded something entitled 2008
5 guaranteed cash bonus.

6 Do you see that?

7 A. I do.

8 Q. Do you understand that that bonus
9 is part of the bonus including social tax
10 entry that we just talked about on this
11 spreadsheet?

12 A. Yes.

13 Q. Okay. Is there anything else on
14 Mr. Lowitt's contract that would be part of
15 that \$1.5 billion figure?

16 A. If I take Mr. Lowitt as the
17 example, the 4.56 million referred to in the
18 contract as being 2008 guaranteed cash bonus
19 would be part of the 1,271 number reflected as
20 cash in that line.

21 Q. Okay.

22 A. The EPP -- 2008 EPP recommendation
23 to the value of \$1.44 million as reflected in
24 the contract, would be included in the \$258
25 million number.

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2 Q. I see. Okay.

3 A. Any ancillary social taxes and
4 whatever that were due and payable to whatever
5 authorities or any withholding tax in regard
6 with are included in those numbers as well.
7 Those obviously are not specified in the
8 contract as well.

9 Q. I understand that. But any
10 regulatory requirements related to those two
11 entries on its contract would be included in
12 the numbers that you put in the spreadsheet,
13 correct?

14 A. That's correct.

15 Q. Okay. And how about where you see
16 he has a special cash award, is that in that
17 entry on the spreadsheet?

18 A. No, it is not.

19 Q. Okay. Where would I find that
20 entry on the spreadsheet?

21 A. It is not on the spreadsheet.

22 Q. Okay. So what is the special cash
23 award that I see several senior executives
24 from -- former Lehman executives getting?

25 MR. GREEN: Object to the form of

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the question.

A. My understanding of these special cash awards is that they are retention awards subject to future service of the employee. They do not relate to pre-acquisition services performed for Lehman Brothers in relation to these individuals. Consequently, they're not on the schedule.

Q. Okay. So just so -- I was confused about that.

So where I see special cash award and various contracts that is to encourage the individual to stay at Barclays for a period of time, correct?

MR. GREEN: Object to the form.

You may answer.

A. That is my understanding of their retention award.

Q. When you say retention award that's an inducement for them to stay a period of time; is that right?

A. Yes. That's my understanding.

Q. Okay. And then -- and because that was not meant to compensate them for work

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they had done at Lehman it's not part of your spreadsheet; is that right?

A. Totally not related to the pre-acquisition service supplied by Lehman Brothers and consequently are not on the schedule.

Q. Okay. So this schedule is only relating to pre-acquisition services that former Lehman employees performed for Lehman; is that right?

A. Yes. That's correct.

Q. All right. Thank you for clarifying that.

While we're on Mr. Lowitt's contract, again we'll use it an example but do you see the provision that says termination other than for cause?

A. I see the provision.

Q. And that lays out certain benefits that he's entitled to if he gets terminated without cause. Is that what I would call a -- is that a severance payment?

MR. GREEN: Take your time to read the provision before you answer just to

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make sure your answer is addressed to the question.

(Document review.)

A. Can you repeat the question?

Q. Well, why don't we do this. We're going to get to some entries called severance on your spreadsheet so we'll come back to that question.

A. Yes.

Q. It has to do with severance so let's just postpone that question.

Let's go back to your spreadsheet.

The next entry I see is IBD Grad Programs. Could you tell me what that is?

A. These -- the IBD grad program is the graduate program implemented by the former -- well, we had one at Barclays Capital but the majority of the -- well, all the people reflected on here are the former Lehman Brothers graduates that were working in the investment banking division of Lehman Brothers that came on as part of the acquisition. The payments related to them are reflected here in respect of their pre-acquisition service.

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These were made in June of 2009.

That is a quirk -- I term it a quirk. It's market practice for Lehman Brothers graduate program to pay their annual bonuses to the graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this -- their policy in respect of the US graduates.

Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the school?

A. No, no, no. These are payments to the individuals. The graduate program as -- these are people as you pointed out are graduates that we recruited off campus to come and work for us. They're on the former graduate program within investment banking. And their compensation is -- I would term it as being quite rigorously standardized in the sense that there's a lot of competition in the market for these individuals and there's quite a standardized form of compensation paid to them. And they're on the specific program

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2 that is different to let's say non-graduate
3 employees.

4 Q. So this isn't a bonus. This is a
5 compensation -- this is an extra form of
6 compensation to them because they went to
7 graduate school?

8 A. No. It's an extra form of
9 compensation because they're on the graduate
10 program and as part of that program they're
11 entitled to certain awards at certain points
12 in time. June 2009 being the point in time at
13 which they were entitled to them.

14 Q. Okay. I guess I'm just not
15 understanding that. You've recruited them out
16 of -- Lehman has recruited them out of a grad
17 school and this is a payment they get as an
18 extra incentive to come work for Lehman?

19 MR. GREEN: Objection to form.

20 You may answer.

21 A. This is for all intents and
22 purposes in general their annual bonus, okay?
23 Their timing is different than the general
24 population for whatever reason. That's
25 standard practice at -- it was standard

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2 practice at Lehman -- the cycle of their bonus
3 awards or payments were midyear. Whereas
4 everyone else it's year end.

5 Q. Okay. But they are still in grad
6 school still?

7 A. No, no. They have left grad
8 school. They're all graduates. But they're
9 part of our formal graduate program having
10 been recruited from grad school.

11 Q. Okay. And how are they eventually
12 transitioned from this program into becoming a
13 regular -- like, how do they transition to the
14 normal bonus cycle?

15 A. I can't speak for the exact Lehman
16 policy but in general my understanding of the
17 graduate program that we have is that they
18 rotate for a certain period of time within the
19 business in which they work. They learn their
20 business. They, you know, work, they learn,
21 et cetera. And as and when they -- the
22 graduate program is generally a finite amount
23 of time. In Barclays Capital traditionally it
24 was 18 months. The graduates did a bunch of
25 rotations in various business areas and they

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2 were either employed or not employed at the
3 end of that cycle by Barclays Capital.

4 Q. Okay. So --

5 A. But I -- if the Lehman Brothers
6 scheme is the same in general as the Barclays
7 Capital scheme, that's how think I would
8 transition into what I would term as the
9 general population.

10 Q. Okay. I think I understand it.
11 So this is -- these are folks who had been in
12 this graduate program as of September 22nd and
13 now are able to continue in that same program
14 at Barclays?

15 A. Yes. That's my understanding of
16 it.

17 Q. Okay. So the \$11 million here is
18 in lieu of an annual bonus for them?

19 A. It's exactly the same for all
20 intents and purposes as any other compensation
21 delivered to any other ex-Lehman employee.
22 It's just that the timing is different.

23 Q. Well, do they also receive a base
24 salary?

25 A. Yes, they do.

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2 Q. Okay. So they have a base salary
3 and then an additional amount paid in or
4 around June of every year; is that correct?

5 A. That's correct.

6 Q. And is this only the additional
7 amount or does this also include the base
8 salary?

9 A. This is the additional amount.

10 Q. And where does their base salary
11 fall?

12 A. In the normal books and records of
13 Barclays Capital.

14 Q. So that would be up in the first
15 item, the \$5 million we talked about earlier?

16 MR. GREEN: Object to the form.

17 A. I would say that insofar as the
18 IBD graduates may or may not have -- may have
19 been in the payrolls that Barclay made good
20 the answer would be yes.

21 In general, I don't believe -- I
22 believe that most of those investment banking
23 graduates were not part of that payroll cycle
24 and consequently any salary paid to them
25 pre-acquisition would have been borne -- the

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2 costs would have been borne by Lehman Brothers
3 and post acquisition would have been borne by
4 Barclays Capital in the normal course of
5 business. And those payments would not be
6 reflected in the schedule.

7 Q. Okay. So this \$11 million for IBD
8 graduates is only -- does not include the base
9 salary component of their compensation.

10 A. That's correct.

11 Q. Okay. It only includes the
12 portion of their compensation that they
13 receive every June. Or thereabouts.

14 A. It reflects what was paid to them
15 in June 2009.

16 Q. Okay. And --

17 A. In respect of their
18 pre-acquisition service for Lehman Brothers.

19 Q. So it's paid to them in June of
20 2009 but it relates to their work up until
21 September of 2008?

22 A. Yes.

23 Q. And how about their work from
24 September onward?

25 A. This again comes back to the

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2 difference in treatment between a graduate and
3 a non-graduate. As I mentioned before,
4 graduate compensation is quite highly specific
5 and regulated within specified bands and it's
6 run in a different way to compensation for
7 non-graduates. Consequently, these amounts
8 would have been June payable almost
9 irrespective of the performance of the
10 graduate.

11 So by the fact that we employed
12 them as part of the acquisition those would
13 have been paid in any event. It's simply a
14 timing issue.

15 Q. Well, does it mean that some of
16 that 11 million relates to work that they did
17 after September?

18 A. I don't believe so to be the case.

19 Q. You don't think so?

20 A. No.

21 Q. Why not?

22 A. Because I believe as I mentioned
23 before that those amounts would have been June
24 payable to these graduates in any event.
25 Irrespective of their service. These are --

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2 as I said, their compensation is treated
3 somewhat differently to compensation among
4 non-graduates.

5 Q. Okay. And are they informed that
6 this is their annual bonus?

7 MR. GREEN: Object to the form of
8 the question.

9 A. I haven't seen what was given to
10 them as part of their graduate program.

11 Q. Okay. If we go back to the bonus
12 in the previous entry, the \$1.529 billion,
13 does any of that encompass work that were
14 performed by former Lehman employees since
15 they've come to Barclays? In other words,
16 after September 22nd?

17 MR. GREEN: Object to the form.
18 Asked and answered.

19 A. This schedule represents
20 compensation paid to former Lehman Brothers
21 employees in respect to their pre-acquisition
22 services for Lehman Brothers.

23 Q. So am I correct to say that \$1.529
24 billion does not relate in any way to work
25 these individuals performed for Barclays after

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2 September 22nd?

3 A. That is my understanding, yes.

4 Q. And so in certain employment
5 contracts if I see anything relating to a 2009
6 bonus recommendation you're saying that would
7 not be in this \$1.259 billion number?

8 A. No, it wouldn't. It would not be
9 in that number.

10 Q. Okay.

11 A. Well, could you show me an example
12 if you want to be specific?

13 Q. I'm not sure I have one but I --

14 A. I mean, if I refer back to Mr.
15 Lowitt's contract it talks about a 2008
16 guaranteed cash bonus and a 2008 EPP
17 recommendation.

18 Q. Right.

19 A. Those amounts are included on the
20 spreadsheet. Had there been two additional
21 clauses referring to 2009 cash and stock,
22 those would not have been on the schedule.

23 Q. Okay. That was my question.

24 Now, when you see on his contract
25 he has a -- if you see on there it says

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compensation he has a base salary of 200,000.

Do you see that?

A. Yep. I do.

Q. Is that on your spreadsheet at all within any entries?

A. No.

Q. And why is that?

A. Because that salary would have been paid to him post-acquisition. The schedule does not reflect any post-acquisition obligations.

Q. I understand. So that is compensation he's receiving for work he's performing for Barclay post-acquisition.

A. That would be correct. The only way that that -- some of that 200,000 would have been part of this schedule is if it was part of the pre-2009 payroll we discussed previously.

Q. I understand. Okay.

The next entry you'll see is entitled Severance. Could you tell me what that is meant to cover?

A. That relates to payments and

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ancillary -- payments to individuals. Withholding taxes and ancillary liabilities in respect of the reduction in force exercise implemented in Q4 2008 and Q1 2009 in respect of former Lehman Brothers employees.

Q. Okay. When I see RIF in the source that's reduction in force?

A. That acronym stands for reduction in force, yes.

Q. And what does that VIG stand for?

A. I don't know what VIG actually stands for. It is meant to refer to the Q1 2009 reduction in force exercise.

Q. So RIF refers to the fourth quarter '08 reduction in force?

A. That's my understanding.

Q. And the second acronym refers to the first quarter of '09 reduction?

A. That's my understanding.

Q. Okay. And you got lists of -- what do your lists show from HR? I see a reference from HR.

A. We maintained -- we, HR, maintained databases of payments made to

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individuals and related items on a name-by-name-basis reflecting these items totalling these amounts on the schedule.

Q. Okay. Now, these individuals came to work for Barclays at or around September 22nd and had left since then?

A. These are former Lehman Brothers employees that came and worked for Barclays and then were part of the reduction in force exercises, yes.

Q. Okay. So they're not -- that list does not include people who ever came to Barclays at all.

A. That's not my -- I believe that to be the case, yes.

Q. Okay. So if they received severance it was from Lehman, not Barclays, correct?

MR. GREEN: Object to the form of the question. You can answer if you know.

A. I don't know.

Q. Okay. Fair enough.

A. I don't know.

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Q. And how was their severance calculated?

A. The standard severance policy of Lehman Brothers was applied in respect to -- in most cases in respect of former Lehman Brothers employees and the application of that policy resulted in severance payments being calculated and awarded to individuals concerned.

Q. Okay. Now, this is -- these severance payments are separate from the bonus payments we talked about earlier.

A. Yes, they are.

Q. Okay. So these are -- is it correct all of these payments have been made to people who no longer work for Barclays, correct?

A. Yes.

Q. Now, why in the entry do we have some severance and it looks like it's payable in the future? Do you see the entry I'm talking about? The \$27 million?

A. I do.

Q. What is that meant to cover?

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A. These are meant to cover exactly the same thing in that they are severance related to former Lehman Brothers employees that are part of the reduction in force exercise. But these are amounts that had not at the time of the production of the schedule either been paid or had been reconciled fully to the extent that they had -- we can trace the item to a payroll.

Q. Can you explain that last part to me.

A. For the most part these amounts have been paid. Have actually been discharged and the cash has left the account. The 27 million reflect payments that have not as yet been made. All are still in the process of being reconciled.

Q. Meaning negotiating with the individuals leaving?

A. No. Reconciling between what people originally estimated their -- an individual severance to be and what they were eventually paid on the payroll. There may be differences between those two points.

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Q. So am I correct to say that that 27 million entails either a reconciliation issue that you just mentioned or something that's been promised to someone after they left but that's payable in the future.

A. That's my understanding, yes.

Q. Okay. So if I wanted to know the total amount of severance paid to former Lehman employees or to be paid to former Lehman employees I would add up the 238 and the 27 million, correct?

A. Yes. And that would cover not only the payment made to individuals and the withholding associated with those but also an estimate for ancillary benefits and amounts that may be payable on those amounts to various regulatory bodies.

Q. So do you have any understanding whether these severance entries related in any way to the clause 9.1(c) of the APA that we discussed earlier which talked about bonuses?

MR. GREEN: Object to the form to the extent it calls for a legal conclusion.

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A. I don't have a specific -- I don't have specific knowledge as to how the two are tied together or not as the case may be. I'm not qualified to interpret that. What I can say is that again these are severance related to former Lehman Brothers employees related to their service with Lehman pre-acquisition.

Q. Okay. In the Future Severance entry in your note you talk about the RIF and VIG list from HR and then you write, "And includes 25 percent for benefits for RIF."

What does that refer to?

A. We have made an estimate in these amounts in this 27 million in respect of, as I mentioned earlier, payments that may be due and payable to regulatory bodies in respect of benefits or people that are on salary continuation. So these are people that don't get their severance upfront, they take it over a period of time, and they're still covered by benefits. So those are payments, estimates in respect of the benefit amounts that they're still covered for during the period of their severance.

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Q. So is it correct to say 25 percent of the 27 million is that type of benefit?

A. I don't know if that's the exact calculation. I haven't got an answer for that.

Q. Okay. If you refer back to Exhibit 19 are these severance payments part of the \$2 billion in comp that you see listed there or do you have any understanding about that?

MR. GREEN: Object. Calls for a legal conclusion.

A. I don't know what that represents. So I can't say whether those services are included or not.

Q. When you said that you were pointing to the \$2 billion on figure 19?

A. Described as comp, yes.

Q. Oh, okay. When I looked at the prior version, 280B, it says Severance 2 as the title. Or is that just a typo?

A. Typo.

Q. Okay. And now you might have covered this already but how did the severance

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2 figures change from the time you prepared the
3 first version of this -- or version marked as
4 280B versus the most recent version?

5 I mean, I see they've gone down in
6 terms of the payment severance version but
7 they've gone up -- oh, no. I guess they've
8 gone down in both instances.

9 MR. GREEN: Object to the form.

10 A. Could you just restate that
11 question?

12 Q. If I compare the two severance
13 entries on Exhibit 280B with 281B it's fair to
14 say the severance numbers have reduced,
15 correct?

16 A. That is correct.

17 Q. And my question is why.

18 A. If you aggregate them I believe
19 the Schedule 280B, the amounts of severance
20 total \$314 million. On Schedule 281B they
21 total \$265 million. That's approximately a
22 \$40 million difference.

23 Is that right?

24 \$50 million difference. Excuse
25 me.

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2 MR. GREEN: Forty-nine.

3 A. \$49 million. Okay.

4 The reason for the movement --
5 there are two reasons in general. One was a
6 pure error on the spreadsheet. There were
7 amounts paid -- there were amounts of
8 severance that were paid to individuals that
9 were included both in the bonus including
10 social tax line and in the severance line.
11 That related to approximately \$28 million that
12 if I refer back to 280B that \$28 million was
13 reflected in the 261 and was reflected in the
14 1,529.

15 Q. So you're just removing the double
16 counting.

17 A. We removed the double count and
18 moved it to the second schedule which we
19 discovered for the reconciliation award.

20 Q. Okay.

21 A. The other reduction of the
22 additional, what? -- \$21 million relates to a
23 full -- a more full reconciliation of the
24 severances yet to be paid. As I mentioned
25 earlier, we were in the process of reconciling

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2 what original severances were estimated to be
3 for individuals versus what was actually
4 processed and paid ultimately to those
5 individuals.

6 And in the cross-comparisons of
7 the original database to the payroll we
8 discovered that people had been estimated to
9 receive severances substantially in excess to
10 what they actually received. So the
11 difference between A and B is a reduction as
12 you see reflected on the schedule.

13 Q. Okay. Is any of the difference
14 between these two schedules -- the severance
15 entries on these two schedules the result of
16 any kind of change in policy at Barclays as to
17 severance payments?

18 A. Not at all.

19 Q. Okay. And who would I ask if I
20 really wanted specifics on that question?
21 That would be --

22 MR. GREEN: On which question?

23 Q. On just severance payments.

24 A. On policy or specific severance
25 payments?

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2 Q. Both.

3 A. On policy I think you could direct
4 both sets of questions through to Mr. Kerman.

5 Q. Okay.

6 A. Although he's not responsible for
7 payroll. You know, he may or may not pass
8 that question on.

9 Q. But when you get the lists from
10 HR, is he the person preparing those lists?

11 A. No. It would be -- it's prepared
12 by, you know, people within HR function.

13 Q. Okay.

14 A. He doesn't prepare them, no.

15 Q. Well, does he supervise those who
16 prepare them?

17 A. He's the head of employee
18 relations. I don't know whether he
19 particularly supervised the preparation of
20 these databases. He knows of their existence.

21 Q. But am I correct -- I mean, as
22 you've described it, it seems to be -- the
23 difference in the two schedules appears to me
24 to be just reconciling accounting errors or
25 reconciliation type errors; is that right?

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MR. GREEN: Object to form.

A. The errors -- well, the two items represent a double count of particular individuals.

Q. Right.

A. Which were clear errors in the production of the original spreadsheet. As well as a further reconciliation as to estimated severance amounts versus actual payments to former Lehman Brothers employees. The reconciliation effort is a -- you know, was -- is a joint effort between HR and finance professionals.

Q. Okay. Now, if we looked at your spreadsheets over time which you said you started preparing them in the fourth quarter of '08, is it fair to assume that the severance numbers would have increased over time?

MR. GREEN: Object to the form.

A. I don't recall.

Q. I mean, the more people leave, the more gets paid out in severance and these numbers increase, correct?

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A. I would be speculating. It sounds plausible but I can't answer directly. I don't have the previous schedules in front of me.

Q. Okay. Well, my question is how do you know that these severance payments are made in respect of work they did at Lehman when they've been working for Barclays for six or eight months now? Where's the cutoff?

MR. GREEN: Object to the form.

A. In general, severance payments are based on previous service at an employer. The vast majority of any individual receiving a severance, the vast majority of their previous service would have been in respect of Lehman Brothers, services rendered to Lehman Brothers.

Q. So in preparing this schedule which is only supposed to reflect service or costs associated with their service at Lehman, you're assuming that the entire amount of severance paid to these individuals is in respect of their service at Lehman; is that right?

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A. That is what I am assuming on the schedule, correct.

Q. And theoretically at some point any severance payment they received should also include a component that relates to their work at Barclays, right?

MR. GREEN: Object to the form.

A. Just repeat that question, please.

Q. Well, theoretically over time if these folks worked for Barclays for a period of time, a portion of their severance has to be allocated to the work they did at Barclays as opposed to Lehman, right?

A. That would be correct.

Q. Okay. But you haven't made that allocation in preparing this spreadsheet?

A. I don't believe so. I can't answer for my -- I believe that these represent amounts paid to individuals for their pre-acquisition service.

Q. Okay. The next entry talks about the payroll tax on equity compensation.

A. Yes.

Q. Could you explain to me what that

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is?

A. Those would be amounts due and payable to relevant tax authorities once the equity awards reflected on the schedule are vested and become vested by the employees.

Q. So is this the three-year cliff vest you talked about?

A. Yes.

Q. So three years from now there will be some kind of obligation to regulatory authorities based on individuals' receipt of their stock bonus?

A. That's my understanding.

Q. And the 1.79 percent what is that based on?

A. That's an estimate made by finance based -- you'd have to ask them. My understanding is it's based on a blended rate of tax which is standard practice across Barclays Capital.

Q. Okay. And then what is that -- 1.9 percent of what?

MR. GREEN: 1.79 percent you mean?

Q. I'm sorry. 1.79 percent of what?

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A. It relates to the \$258 million of -- in the equity column of bonuses including social taxes. I should point out here if you do a calculation of 1.79 on the 258 you don't get 9.

Q. Right. That's my question.

A. The difference is the growth in the Barclays stock price subsequent to the award being made. The tax will be payable, due and payable, based on the ultimate value of those awards when the vest. So that 9 could increase over time.

Q. Well, so this 1.79 assumes a growth in the value of the stock that's vesting over that three-year period, right?

A. The 1.79 is the blended -- my understanding is that the 1.79 is the blended rate applied to the equity award respect of tax.

Q. Right.

A. You will notice that's being increased by a multiple of 2 on the spreadsheet.

Q. Right.

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A. The reflects the fact that between the date of award of these stock -- these amounts of stock and the date at which these schedules were prepared, the stock price of Barclays underpinning the value of these awards had roughly doubled.

Q. From when to when? From September --

A. These stock awards were made in May 2009. And the schedule is done as you see it with all these -- it is an estimate of a liability that is due and payable at some future time. That liability may or may not be \$9 million. It could be different.

Q. Okay. But at present you're estimating it at 9 million.

A. That's correct.

Q. And that's assuming or it's based on an increase in the value of the Barclays stock which is the item that you multiple by 1.79.

A. My calculation would be the \$258 million multiplied by 1.79 percent times 2, the 2 factor representing the growth of the

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Barclay stock price.

Q. Okay. And now this \$9 million doesn't get paid to former Lehman employees, right? It gets paid to regulatory authorities around the globe?

A. Yes.

Q. The next entry talks about acquisition buyout vesting over two years.

Do you see that?

A. I do.

Q. \$53 million. What is that meant to encompass?

A. As described here, it's a bonus relating to pre-acquisition performance by an individual or individuals that worked for Lehman Brothers and now work for Barclays. These are commitments that we assumed and embodied in contracts in respect of this individual or individuals to deliver this \$53 million over the next two years.

Q. Okay. Now, let's turn back to Mr. Lowitt's contract.

A. Yeah.

Q. Do you see the special cash award

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to be awarded over two years?

A. I do.

Q. Is that this 50 -- part of this \$53 million you're talking about?

A. No.

Q. Okay. So I don't see any other entries here that could be that. You're saying that he's not one of the recipients of the \$53 million that you're talking about here?

A. No, he is not.

Q. Okay. And who is getting that money?

MR. GREEN: You can go ahead and answer.

A. A gentleman by the name of Mr. Jonathan Hoffman.

Q. And who is he?

A. He is a principal trader in the global markets business at Barclays Capital.

Q. And why is he getting this money?

A. The amount was owed -- was due and payable to him by Lehman Brothers under his contract with Lehman Brothers pre-acquisition.

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2 Barclays assumed that liability as part of the
3 acquisition process and embodied these amounts
4 of that compensation amongst others in that
5 contract and those amounts are due and payable
6 to him over time as specified in that
7 contract.

8 Q. Okay. Now, this is all -- the
9 entire 53 million goes to this one individual?

10 A. That is correct.

11 Q. Over a three-year period?

12 A. He receives two tranches of \$20
13 million in February '10 and February '11. And
14 the additional 13 will effectively be
15 delivered in February of 2010.

16 Q. Okay. When I -- just for
17 clarification when it says February '10 that
18 means February 2010?

19 A. That's correct.

20 Q. And February '11 means February
21 2011?

22 A. That is correct.

23 Q. And maybe you explained this but
24 is this -- what is this to reflect as far as
25 his performance at Lehman?

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2 A. He was owed -- under his contract
3 with Lehman Brothers, that was the amount due
4 and payable to him -- well, that is not the
5 entire amount. But that is the amount
6 included on this spreadsheet. Well, the
7 entire amount is included on this spreadsheet.
8 There's another element sitting in bonus
9 including social taxes. The 53 million
10 represents the amount outside of the bonus
11 including social taxes amount and is in
12 respect -- the entire amount is in respect of
13 the contract that he had at Lehman Brothers
14 which guaranteed him a payout on his trading
15 performance. And the amount relates to the
16 trading performance he did, for want of a
17 better word, pre-acquisition.

18 Q. Okay. So this is a con -- he had
19 a contract with Lehman that provided him X
20 amount of compensation based on his trading
21 performance and this number is the amount due
22 and payable to him up to September 22nd, 2008
23 under that contract?

24 MR. GREEN: Object to the form of
25 the question.

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2 A. That's correct.

3 MR. GREEN: Well, could we go off
4 the record for one second? Because I
5 think the record is unclear. Or I can
6 add a clarification.

7 MR. HINE: You want to add a
8 clarification?

9 MR. GREEN: But I don't want to
10 testify.

11 MR. HINE: No, no. You can take a
12 break.

13 MR. GREEN: Take a short break.
14 (Recess taken.)

15 MR. HINE: Let's go back on the
16 record.

17 A. A clarification of the previous
18 question perhaps is relevant. The amounts --
19 the amounts payable to Mr. Hoffman were
20 amounts that were due and payable to him under
21 the contract with Lehman Brothers. And the
22 clarification is they had not as yet at that
23 time been paid to him at all. They were just
24 due and payable to him. He hadn't received
25 any of that compensation.

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2 Q. So Barclays undertook that
3 obligation to pay him what he was owed by
4 Lehman.

5 A. That is correct.

6 Q. Okay. But in your note here it
7 says bonus relating to performance for one
8 January to 22 September '08.

9 Do you see that?

10 A. I do.

11 Q. Then it says but with future time
12 served criteria and a portion linked to future
13 production.

14 What does that mean?

15 A. I can't -- I'll give you my
16 general interpretation of the terms. The
17 specific legal interpretation of the
18 forfeiture clauses I can't really speak to all
19 that.

20 Q. Sure.

21 A. The intention was to deliver two
22 payments or two tranches of \$20 million in
23 each of February 2010 and February 2011.
24 Those payments could be reduced -- each
25 payment could be reduced by up to 10 million

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2 should Mr. Hoffman had made losses in his
3 trading for Barclays Capital post-acquisition.

4 So for all intents and purposes we
5 promised Mr. Hoffman to pay him \$20 million.
6 10 million of that 20 -- of each of the 20
7 could be re -- that 20 million could be
8 reduced by up to 10 million should he have
9 made losses for Barclays Capital in the
10 performance period subsequent to the
11 acquisition.

12 Q. So part of the 53 is based on his
13 performance at Barclays, right?

14 MR. GREEN: Object to the form.

15 A. No. The entire fee is based on
16 his pre-acquisition performance. The delivery
17 of the residual 53 is to an extent relative to
18 his trading performance at Barclays.

19 Q. All right. So am I correct to
20 say -- and how much is at issue with respect
21 to his performance at Barclays? I thought you
22 said 10 million --

23 A. 10 million of each of the 20 --
24 again, you would need a lawyer to interpret
25 the contract.

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2 Q. Sure. Sure.

3 A. I'm giving you a general
4 intention, and my interpretation personal and
5 it may or may not -- somebody may or may not
6 agree with that or not. Ten of the 20 -- of
7 each 20 was subject to forfeiture depending on
8 the extent of Mr. Hoffman's loss -- trading
9 loss for Barclay in each of those years. And
10 the \$13 million is also subject to him having
11 made money for Barclays subsequent to his --

12 Q. So am I correct to say that the 53
13 million is based on his pre-acquisition
14 performance at Lehman but Barclays'
15 willingness to assume that liability is in
16 part based on how well he performs at
17 Barclays?

18 MR. GREEN: Object to the extent
19 it calls for a legal conclusion.

20 A. Barclays assumed the entire
21 liability and has structured some terms and
22 conditions around the delivery of that
23 liability.

24 Q. Well, but that's a modification to
25 the agreement he had at Lehman, right?

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2 A. The two agreements are distinct
3 and separate. They're two individual
4 contracts that stand alone.

5 Q. Okay. But Barclays assumes a
6 \$53 million obligation based on his work prior
7 to the acquisition, right?

8 A. That's correct.

9 Q. But Barclays' willingness to pay
10 that is contingent on at least in substantial
11 part on how well he performs for Barclays
12 thereafter, correct?

13 A. That is correct. As well as Mr.
14 Hoffman being in employment with Barclays at
15 the time.

16 Q. Okay. So he has to stay an
17 employee at Barclays at least through the
18 third payment.

19 A. I don't know that for certain.
20 Again, I can't interpret the specific leaving
21 clauses or termination clauses under his
22 agreement. But in general that's -- you know,
23 I would say it's based on future time served
24 criteria as well trading performance.

25 Q. Okay. And so is there an

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2 individual agreement with this Mr. Hoffman?

3 A. Yes, there is.

4 Q. Okay. And -- okay. Is there
5 anything else in this entry of 53 million
6 other than the Mr. Hoffman deal?

7 A. Nope.

8 Q. Okay. I had a follow-up question
9 on the -- you had previously talked about the
10 social tax and the payroll tax in certain of
11 these entries. Do you remember that?

12 A. Yes.

13 Q. And I didn't understand whether
14 you're talking about -- when you have an entry
15 for one of those taxes, are you talking about
16 the withholding obligation of Barclays or
17 Barclays' own obligation to pay those
18 authorities?

19 I don't know if that's a clear
20 question but --

21 A. No, it's not.

22 MR. GREEN: Object to the form.

23 Q. Barclays has an obligation to
24 withhold personal income tax as to certain
25 individuals, right?

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A. Yes.

Q. So when you have an entry in here on payroll tax, for example, is that -- where it says payroll tax on equity compensation, do you remember that discussion?

A. Yes.

Q. Is that just a withholding tax or is it an obligation of Barclays to pay the tax authorities?

MR. GREEN: Object to the form.

A. I actually don't know the answer to that. It is a tax that's due and payable to the regulatory authorities. As to whom that liability relates, I don't know.

Q. Okay. And would that be the same answer with respect to the social tax up in the bonus entry?

A. Yes.

Q. Okay.

A. What I can say is that the withholding taxes that you referred to that are -- these are the gross amounts payable to those individuals in terms of -- so if I refer again back to Mr. Lowitt's contract, we've got

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to pay him a cash advance of \$4.56 million.

That's a gross amount payable to him. He in his individual capacity has to pay income tax which we will withhold in entirety. The entire 4.56 is embodied in the 1,271 cash component effectively.

Q. Okay. And I don't think I asked you this but if we go to that bonus entry with social tax, do you see that?

A. Yes.

Q. The 1.529 billion. Could you give me a percentage -- how much of that is the social tax portion and how much is the actual bonus paid to that individual?

MR. GREEN: Object to form.

Q. Gross bonus paid to that individual.

A. I don't have the exact amount but I would categorize it as not significant.

Q. Can you ballpark percentages?

A. Crickey.

If I had to guess I'd say maybe \$50 million.

Q. \$50 million? Okay. And --

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A. And the reason I say that -- and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll.

Q. Sure.

A. But one of the -- the only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's -- I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily.

I do not believe that that -- if I was to look at that line and if you -- I would categorize the social tax item as being not significantly material.

Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses?

A. Yes.

Q. Okay. How about the payroll tax on equity compensation?

A. What's your question?

Q. That's a separate entry so I don't

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need to ask that question. I apologize. I misunderstood that.

A. Okay.

Q. Okay. The payroll tax on acquisition buyout, what is that?

A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule.

Q. So that relates only to Mr. Hoffman's deal with Barclays?

A. That's my understanding.

Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority?

A. That's my understanding.

Q. Can we skip down to ISP awards. Could you explain to me what that is?

A. The acronym?

Q. Yes.

A. The ISP stands for incentive share plan. It is a stock award program -- it's the

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name of the stock award program we have in place at Barclays and which we will utilize to make these relevant awards.

Q. Is this a plan that was in place at Lehman prior to the acquisition?

A. This plan was not in place at Lehman, no. They had similar stock award programs under their own compensation schemes.

Q. Okay. And so what is this \$56 million being paid for?

A. Okay. So these -- the \$56 million directly relates to the \$258,000,000 further up in the Equity column under Bonus Including Social Taxes.

The sequence of events was as follows. Under normal Barclays policy stock awards are made in March of every year. So under the normal practice Barclays would have made stock awards to individuals in March of 2009 in respect of their 2008 annual bonuses.

Q. Okay.

A. The stock awards for various reasons were made in May 2009. The value of the awards -- well, because of the unforeseen

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and unanticipated delay in making the awards to individuals, during that period the stock price at Barclays appreciated substantially and in effect individuals received an amount of stock units of less than what they would have received had the awards been made under the normal process in March 2009 because of the increase in the stock price.

The \$56 million reflects additional shares awarded to those -- to former Lehman Brothers employees and the awards were not exclusive to former Lehman Brothers employees. This just reflects the component related to former Lehman Brothers employees to compensate them for that loss of value that they had suffered as a result of the normal process not having been followed in that particular year.

Q. So just so I understand why -- what caused the delay in the award of the bonus -- of the stock bonuses?

A. I can't speak for the specific reason why. I know there was a delay.

Q. Was it related to the

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Barclays/Lehman acquisition?

A. No. Not to my knowledge.

Q. Okay. So this -- if I understand you correctly, this \$56 million only relates to stock awards granted to former Lehman employees, right?

A. This \$56 million dollars, yes.

Q. All right. And it's to compensate them for the delay in awarding that award from March until May.

A. That's correct.

Q. But aren't the Lehman Brothers employees granted their award back in September?

A. They were given a value, a dollar value of award. When it comes to granting an amount of stock units they get an amount of stock units based on the prevailing share price at the time of the award grant.

So they would have received -- I'll give you a hypothetical example. An individual would have had \$100 worth of stock of value that was to be delivered to him in March of 2009. Assume the stock price in

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March 2009 was a dollar. He would have got a hundred shares. Those awards were never made in March. What happened was they were made in May. In May let's assume for argument's sake the stock was \$2. He would only have got 50 shares. He got -- and he's lost the stock price appreciation he would have got on the hundred shares had he been awarded them three months prior.

The \$56 million is to compensate him for that loss of value in the respect of the fewer amounts of shares that he ultimately received.

Q. Okay. So it's actually the -- it's the value of the appreciation of the stock he would have received from March to May.

A. It's not the entire value. It's to compensate him for that loss of value. I don't believe that the entire value is reflected in this number. It was to compensate him for an extent of that, yes.

Q. Well, here's my question. If he's granted in September \$100 worth of stock bonus

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he would have gotten a hundred shares in March -- or he would have gotten a hundred shares in March if the price was a dollar using your hypothetical, right? He would also have gotten his hundred shares in May if he gets 50 shares at \$2. Why --

MR. GREEN: Object to the form.

Q. Well, I'm trying to use your hypothetical.

A. My hypothetical is that he would not have got the hundred shares in May. He would have only got 50 shares in May.

Q. But it would be worth \$2 at that time.

A. That's correct. The value would have been the same. But he has lost that. Rewind to March. If he had been awarded the shares in March he would have a hundred shares worth a dollar. Those shares by May would have been worth 200 at the stock price of 2.

Q. Okay.

A. You're giving him only a hundred of value in May.

Q. Okay.

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A. That's the difference.

Q. I see. So this is done not only for the former Lehman employees. It's also done for all the other Barclays employees who suffered this same type of loss, right?

A. They were granted for the majority -- for other Barclays Capital employees that received stock awards at the time for the most part, yes.

Q. So this is not --

A. This is a subset of a wider population.

Q. This program, this ISP award was not granted to former Lehman employees. It was granted Barclays wide to those who qualified, right?

A. To my knowledge, it was not granted Barclays wide. It was Barclays Capital wide.

Q. Okay.

A. I don't -- I can't testify as to if it was that specific, but there were more individuals concerned than this. I cannot say it was a Barclays wide policy. I don't know

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that to be true.

Q. But it's not a former Lehman employees policy only.

A. Not only, no.

Q. Okay. So then why is this award -- how is this award related to the work they performed at Lehman? Because, I mean, basically it's compensating them for a delay in a stock payment while at Barclays.

MR. GREEN: Object to the form.

A. The amount of the award is derived directly from the equity awards that would have been made under the normal course of business. And insofar as they are related to pre-acquisition service on behalf of Lehman Brothers, these -- the value of these awards, the economic cost of these awards relate to that pre-acquisition service. It relates to the delivery of the stock component of compensation in many cases embodied in contracts such as Mr. Lowitt's here. Had they been awarded in the normal course of business in March of 2009.

Q. Okay. But --

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A. They all relate to the awards embodied -- well, if I take Mr. Lowitt as an example, any additional shares he would have been awarded under that program relate to the 2008 EPP recommendations that embodied in his contract and the value thereof.

Q. I understand how they relate to it. But the award -- isn't it true that the award itself of the ISP is to compensate them for mistakes or whatever problems occurred at Barclays that caused this delay from March to May, right?

MR. GREEN: Object to the form.

A. I can say that the \$56 million has nothing to do with post-acquisition service of Barclays PLC. It has everything to do with the services that they provided pre-acquisition to Lehman Brothers.

Q. I'm not sure you've answered my question. I understand that the 258 million comes from their pre-acquisition services. But this additional 56 million, isn't it the case, is paid to them because of some mistakes or whatever happened at Barclays that caused

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this delay in awarding the bonus, right?

MR. GREEN: Object to the form.

A. It directly relates to the \$258 million insofar as the \$56 million is derived specifically from the \$258 million reflected on the schedule.

Q. All right. I understand how it's derived from the 258 million and I understand how the 258 million is derived from their pre-acquisition work. But the 56 million is not compensation for pre-acquisition work.

MR. GREEN: Asked and answered. Bill, I think you've asked this question three times and he's given you his answer.

MR. HINE: Well, I'm getting what seems to be an evasive answer.

MR. GREEN: No. He's given you an answer and it's an entirely appropriate answer and there's no reason to ask it until you get the answer you want.

MR. HINE: All right. I just want an answer to the last one I asked.

MR. GREEN: Could you repeat the

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question?

(Record read.)

Q. Is that right?

A. No. In my personal opinion it is not. The \$56 million would have been valued -- would have accrued to these individuals had they received their stock awards under the normal course of business. It was directly compensation related to pre-acquisition services in relation to Lehman Brothers as derived from the shares that they would have got had the normal course of business been followed.

Q. Okay. Now, the payroll tax on those awards, what is that?

A. The calculation of those again is an accounting -- is an estimate similar to the one reflected previously on the schedule entitled Payroll Tax on Equity Compensation.

Q. So same method of estimating only now you're estimating it based on 56 million?

A. That's correct.

Q. Okay. Back to the 56 million for a second. It says here Additional shares

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awarded at 25P. What does that P mean?

A. Pence. English pence. English pounds.

Q. So is that the equivalent of 25 percent?

A. Yes. 25 cents on the dollar.

Q. Okay. So 25 cents on the dollar as measured against the value of a Barclays share from March to May?

A. No. That's not correct. So if you related back to the 258 it's roughly a quarter.

Q. Oh, I gottcha. 25 cents on the dollar as compared to the 258 million.

A. That would be correct.

Q. Okay. And 25 cents is not total compensation for the value increase in Barclays' share but it's a portion of the -- it's based on the -- as a portion of the increase in Barclays' share price from March to May?

MR. GREEN: Object to form.

A. I don't recall the loss of value or the notional loss of value. I don't recall

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the exact amounts. I don't believe it's an exact lack-for-lack replacement. I can't speak to whether it was more or less but I believe it was less.

Q. Okay. Substantially less or just --

A. I don't recall.

Q. Okay. But if I wanted to find that out I would take the share price from Barclays in March and compare it to May?

A. You would think so. That's not practically how things work. The stock awards at any point in time are generally based on an average stock price calculated over a number of days in which stock would have been purchased in the market to hedge the awards.

So there is a process underpinning it. There is some math -- there is mathematical calculations behind all this that had been produced. But you can't simply just take a spot price at a point in time.

Q. I gottcha.

Now, if I look at the bottom line it says Total Spend. Do you see that?

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A. I do.

Q. That is -- that's not what Barclays has spent to date, correct? Because that includes future payment.

MR. GREEN: Object to the form.

A. Not all those cash payments have been made, no.

Q. Okay. In other words, if I wanted to know the total amount that has been paid to date, I would look up to the \$1.543 billion number?

A. On this schedule that would be correct. I would suspect that on further reconciliation some of the 27 million reflected as severance under the payable in the future may well flip up into the previous category.

Q. Okay.

A. And obviously as time moves on other amounts will.

Q. Well, in the course of working on the compensation for these former Lehman employees were you aware that there's a provision in the APA that required them to be

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paid by March 15th of 2009?

MR. GREEN: Object to the form.

A. I've seen the date March 15th, 2009. I'm unsure as to what that obligates Barclays to do or what it doesn't obligate Barclays to do.

Q. Okay. So, in other words, the March 15th, 2009 date is not something you've been shooting to comply with in the course of compensating these employees?

MR. GREEN: Object to the form of the question. Are you speaking to him personally?

MR. HINE: Well, he's not paying them. Barclays is paying them.

MR. GREEN: Okay. So --

Q. Is the March 15th, 2009 date something that Barclays has taken into consideration when it's paid these employees these various forms of compensation?

MR. GREEN: Object to the form. You may answer if you know.

A. I don't know specifically whether we've taken -- it's a date that we know of.

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But I can't answer for the specific wording of your question when you refer to paid. Can you rephrase that perhaps in some different way?

Q. Yeah, let's try this. You see the entry for bonuses, bonus including social tax?

A. Excuse me. Oh, sorry. On the schedule?

Q. On the spreadsheet.

A. Yes.

Q. Was that all paid or committed by March 19th, 2009?

A. The cash amounts -- certainly I would say the vast majority if not all, but there's always an exception. People sometimes don't want to be paid at a particular point in time. Those cash amounts would in the majority have been paid and discharged by that time.

Q. Okay.

A. The equity awards, again, I've explained to you the delay in the award of value -- the award of the amount of shares. But I believe that at the time of bonus there were compensation communications for employees

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they would have been aware of the value of that stock.

Q. Okay.

A. As opposed to the amount of units they would receive. But, again, I'm not specific on the date.

Q. And the delay you talked about was the one you previously mentioned from March to May?

A. That's correct. In terms of the equity awards, yes.

Q. Any other entries on this spreadsheet that were made before March 15th 2008 -- 2009?

A. March 15th? Sorry? Could you say that again? Sorry. I missed the question.

Q. Were any other entries on this spreadsheet paid before March 15th, 2009?

MR. GREEN: Objection to form. You may answer if you know.

A. Yes. There were entries on the spreadsheet prior to March 15th, 2009.

Q. Like what?

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A. An example would have been severance payments made to individuals terminated under the RIF, reduction in force program in Q4 2008 and Q1 2009 as one example.

Q. Okay. Any others?

A. There are likely to be some bonus advances that were made to particular individuals that are included in the 1,271 number which is bonus to clean social taxes. They may well have been paid prior to the 15th of March 2009.

Q. Okay. Any others?

A. Off the -- obviously, the pre-22/9 payroll items would have been discharged and paid prior to the 15th of March 2009.

Q. Why? When were they paid?

A. Well, as I've said to you 5 million of the \$12 million relate to payrolls that had to be made in September of 2008.

Q. So they were paid in September 2008.

A. That's my understanding.

Q. Okay. And the ex-pat regulatory sum of \$7 million, that was --

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A. I don't know exactly when that was paid.

Q. Okay. Could you turn to the APA again. Section 9.1(c).

A. (Witness complies.)

Q. And I know you're not a lawyer and I'm not trying to trip you up here but if you refer to the section where it says -- do you see the sentence about a third of the way down the paragraph that starts, "Any amounts that would have been allocated in respect of any transferred employee who voluntarily terminates employment before such award is made shall instead be allocated among the remaining transferred employees."

Do you see that?

A. I do.

Q. Did that ever happen?

MR. GREEN: Objection to form.

You can answer if you know.

A. I don't know. Did what ever happen?

Q. Well, did someone who was supposed to get a bonus, for example, and voluntarily

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terminated did the bonus that he was supposed to get thrown back in and get distributed among the remaining transferred employees?

A. I don't know. I mean, there were people that resigned.

Q. Yeah.

A. And they got nothing as they left.

Q. Okay. Let me give you a specific question then.

MR. HINE: Let's mark this.

(Deposition Exhibit 282B, document

bearing production numbers

BCI-EX-00113161 through BCI-EX-00113163,

marked for identification as of this

date.)

BY MR. HINE:

Q. Mr. Exall, I'm handing you a copy of an exhibit marked 282B which appears to be a form of employment contract offered to Mr. McDade dated December 18th, 2008. It has Bates stamps BCI-EX 00113161 through -63.

My first question is have you ever seen this document before?

A. I may have seen it. I don't

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recall.

Q. Do you know if Mr. McDade signed this employment contract with Barclays?

A. No, I don't.

Q. You don't know?

A. I don't know.

Q. Okay. Just as an aside, do you see the date is September 18th, 2008?

A. I do.

Q. Which is prior to the September 22nd closing.

Do you know how many Barclays employees were offered employment contracts before the closing?

A. Before the 22nd of September?

Q. Yeah.

A. No. I don't know.

Q. Do you know how I could find that out? Would Mr. Evans know that?

A. He wouldn't know off the top of his head. I guess it's a request you could make. And it could be found out. It's possible.

Q. Okay.

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A. We could count contracts.

Q. Do you know if there was any effort to offer employment terms to the -- what I've seen called as the Elite 8 or the top eight people at Barclays prior to the closing?

MR. GREEN: Object to the form of the question. When you say closing what date are you referring to?

MR. HINE: I'm talking about September 22nd, 2008.

A. Sorry. Could you repeat the question?

Q. Are you aware of any efforts to offer employment or to discuss the terms of employment with former Lehman executives prior to September 22nd?

A. I have no direct knowledge. I wasn't involved in any negotiations with any of these employees.

Q. Okay. Have you heard anything about that?

A. I don't recall.

Q. Do you have any understanding

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about former Lehman executives who signed employment contracts with Barclays prior to September 22nd, 2008?

A. Do I have any what? Sorry.

Q. Understanding.

A. What does that mean?

Q. Well, do you have any knowledge that, for example, Mr. Lowitt signed his contract before the closing?

A. I've never examined the contracts in that respect, no.

Q. Well, I didn't ask you if you examined the contracts. Do you have any understanding about whether any of the senior executives at Lehman were signed up by Barclays before the closing?

A. I don't know.

Q. Okay. Back to Mr. McDade's --

A. Okay.

Q. Whether he signed it or not I'm not really sure, but my question is you'll see in this document it refers to a cash bonus of 2008, right? A 2008 EPP recommendation. Do you see that?

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A. I see that.

Q. Do you see the special cash award?

A. I do.

Q. Now, did Mr. McDade -- Mr. McDade resigned, correct?

A. I don't know how -- I don't know the circumstances around Mr. McDade's joining or not or leaving or not from Barclays.

Q. You don't know whether he was terminated for cause or without cause.

A. I have no knowledge of his arrangements, no.

Q. Okay. Do you have any knowledge of any individual that was supposed to be offered awards like this who then left and my question is what happened to that award money?

MR. GREEN: Object to the form.

A. I don't understand the question.

Q. Well, if you look back at 9.1(c) it purports to say -- it appears to say that their award money should go back into the pool and be shared among the all the transferred employees and my question is did that in fact ever happen?

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MR. GREEN: Objection to form.

Calls for a legal conclusion.

A. I don't know what Section 9.1(c) obligates Barclays to do so I can't answer that question.

Q. Okay. You don't know one way or the other?

A. I don't have an opinion on that.

Q. Okay. If you skip down further in that paragraph, 9.1(c), you'll see it starts with the word "however" and then from there to the end of the paragraph it talks about a circumstance where perhaps more than 10 percent of the transferred employees voluntarily terminate.

Do you see that?

A. I do.

Q. Am I safe to assume that that did not happen in connection with the Barclays/Lehman transaction?

MR. GREEN: I just want to caution the witness to read the exact language you're referring to.

Q. It says, "However, the accrued '08

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FY liability shall be reduced if..."

MR. GREEN: All the way to the end of the paragraph?

MR. HINE: Yes.

MR. GREEN: Okay. Take your time to read that.

Q. Take your time to read that but my question is did that ever happen or are you aware of that clause ever being invoked or that many people ever left. So just take your time to read it.

MR. GREEN: Object to the form before he answers the question.
(Document review.)

A. I can't speak for the obligations that this places upon Barclays. I don't know what those are. I can't interpret it.

Perhaps I can answer in a different way. I don't know what it means by voluntarily terminated. That would be my question. I don't know what exactly you're asking me to answer.

Q. Well, I understand you're not a lawyer and I'm not trying to ask for any legal

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interpretation. Is it correct to say that in the course of your employment in your present position you haven't heard anyone say, Oh, more than 10 percent of the people left, we should reduce the bonus pool?

MR. GREEN: Object to form.

Q. Or words to that effect?

A. No one has said that to me, no.

Q. Okay. Did you understand that anyone was ever considering that?

A. My understanding is that this is a clause in the APA and people are aware of it and relevant people know what that means. It is a consideration. It has been considered. I do know that.

Q. But did more than 10 percent of the employees voluntarily terminate?

MR. GREEN: Object to form.

A. I can't answer -- I can't give you a factual answer because I don't know the extent to which -- I don't know what you're defining as voluntary termination. Perhaps that means resignation. I don't know what this actually refers to. I've never heard

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someone -- I've never personally heard someone say that the section of the clause would apply.

Q. Okay. And you don't have -- in your experience working in the compensation field you don't have an understanding of what voluntarily terminate means?

A. If you're asking for what I understand by voluntarily termination I can give you my view, my personal view, and that may be different than the interpretation of the APA or the position taken by Barclays.

My view is that that refers to voluntary resignations by former Lehman Brothers employees that decided post-acquisition that they no longer wanted to be employed by Barclays Capital and hence resigned.

Q. Okay. And in your view did more than 10 percent of the transferred employees do that?

A. I would like to -- well, I don't know the exact number or the exact proportion. I would -- I'd leave it at that. I don't know

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the exact number or exact proportion but -- leave it at that.

Q. Is it your sense that more than 10 percent have resigned?

MR. GREEN: Object. Calls for speculation.

A. If you want me to speculate I will. I will speculate that not more than 10 percent had voluntarily resigned under these -- post-acquisition.

Q. Okay. Fair enough. Thank you.

A. I mean there would be other points in time. That's not to say that in the future that if you aggregated it all up --

Q. Sure.

A. Right?

Q. But you're speaking as of today.

A. I'm speaking as of today. To the best of my knowledge, yes.

MR. GREEN: Speculating as of today, I might add.

A. Speculating as of today, that's correct.

MR. GREEN: To the best of your --

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 A. To the best of my speculation.</p> <p>3 Q. Is it fair to say you don't have</p> <p>4 any personal knowledge or understanding about</p> <p>5 the circumstances of Mr. McDade leaving?</p> <p>6 A. No direct knowledge, no.</p> <p>7 Q. Do you have any indirect</p> <p>8 knowledge?</p> <p>9 A. I don't know how or under what</p> <p>10 circumstances he left, no.</p> <p>11 Q. Do you know how or under what</p> <p>12 circumstances he received any compensation</p> <p>13 from Barclays?</p> <p>14 A. I don't believe he received any</p> <p>15 compensation from Barclays. I don't know that</p> <p>16 for fact. But that is my general</p> <p>17 understanding.</p> <p>18 Q. Okay. Well let me introduce this</p> <p>19 as an exhibit and maybe it will prompt a</p> <p>20 further question.</p> <p>21 (Deposition Exhibit 283B, document</p> <p>22 bearing production number</p> <p>23 BCI-EX-00113194, marked for</p> <p>24 identification as of this date.)</p> <p>25</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. HINE:</p> <p>3 Q. Mr. Exall, I'm handing you a copy</p> <p>4 of a document marked as Exhibit 283B which</p> <p>5 appears to be a W-2 statement in connection</p> <p>6 with -- issued by Barclays to Mr. McDade and</p> <p>7 my only question is whether this provides any</p> <p>8 assistance to you in trying to figure out</p> <p>9 whether Barclays paid Mr. McDade anything.</p> <p>10 MR. GREEN: Object to the form of</p> <p>11 the question. The document speaks for</p> <p>12 itself.</p> <p>13 MR. HINE: Okay.</p> <p>14 MR. GREEN: Are you asking does it</p> <p>15 refresh his recollection?</p> <p>16 MR. HINE: Yes.</p> <p>17 A. I've never seen this document.</p> <p>18 Q. Do you know why Mr. McDade was</p> <p>19 paid anything if at all by Barclays?</p> <p>20 A. I have no idea. As I've said</p> <p>21 before, I have no knowledge of his</p> <p>22 arrangements.</p> <p>23 Q. Fair enough.</p> <p>24 (Deposition Exhibit 284B, document</p> <p>25 bearing production numbers</p>
Page 172	Page 173
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 BCI-EX-(S)00027190 through</p> <p>3 BCI-EX-(S)00027197, marked for</p> <p>4 identification as of this date.)</p> <p>5 BY MR. HINE:</p> <p>6 Q. Mr. Exall, I've handed you a copy</p> <p>7 of a document marked as Exhibit 284B which is</p> <p>8 an e-mail dated September 23rd and the</p> <p>9 attachment thereto is Bates stamped</p> <p>10 BCI-EX-00027719 through -197. And my first</p> <p>11 question after you've had a chance to review</p> <p>12 it is have you ever seen this document before.</p> <p>13 A. Yes, I have this.</p> <p>14 Q. Could you explain to me what this</p> <p>15 is?</p> <p>16 A. As explained on the front page, an</p> <p>17 e-mail from Mr. Evans. It represents an</p> <p>18 update of our present bonus and related spend</p> <p>19 in respect of the commitments we have made to</p> <p>20 former Lehman employees as part of the</p> <p>21 acquisition.</p> <p>22 Q. All right. So I see several</p> <p>23 iterations of this. Is this a periodically</p> <p>24 prepared analysis?</p> <p>25 A. Yes. This was a set of</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 analysis -- or this was an analysis prepared</p> <p>3 daily for the purposes of the Executive</p> <p>4 Committee of Barclays Capital for a certain</p> <p>5 period following the acquisition.</p> <p>6 Q. Is it still prepared daily?</p> <p>7 A. No.</p> <p>8 Q. So this is -- immediately</p> <p>9 following the acquisition this is a daily</p> <p>10 summary?</p> <p>11 A. That's correct.</p> <p>12 Q. And how long did those summaries</p> <p>13 go? Do you know?</p> <p>14 A. I don't --</p> <p>15 MR. GREEN: Object to the form.</p> <p>16 A. I don't recall when we ceased</p> <p>17 producing them. I can't recall.</p> <p>18 Q. Who prepared these?</p> <p>19 A. I prepared the original one</p> <p>20 personally drawing on work done by several HR</p> <p>21 colleagues. Thereafter individuals in my team</p> <p>22 prepared the document and distributed it to</p> <p>23 Mr. Evans for distribution.</p> <p>24 Q. Okay. So do you have any way of</p> <p>25 knowing whether you prepared this particular</p>

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

-----X

5
In Re:

6 Chapter 11
7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al., (Jointly Administered)
9

Debtors.

10 -----X

11
12 VIDEOTAPED DEPOSITION
13 OF
14 MICHAEL A. FAZIO
15 New York, New York
16 Friday, February 12, 2010
17
18
19
20
21
22
23

24 Reported by:
ANNETTE ARLEQUIN, CCR, RPR
25 JOB NO. 27497

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1 M. Fazio
2 THE VIDEOGRAPHER: This is the start
3 of tape labeled No. 1 of the videotaped
4 deposition of Michael Fazio in the matter
5 In Re Lehman.
6 This deposition is being held at 575
7 Lexington Avenue, New York, New York on
8 February 12th, 2010 at approximately 9:31
9 a.m.
10 My name is Carlos Lopez from TSG
11 Reporting, Inc. and I am the legal video
12 specialist.
13 The court reporter is Annette
14 Arlequin in association with TSG Reporting.
15 Will counsel please introduce
16 yourselves for the record.
17 MR. STERN: Sure.
18 Jack Stern from Boies Schiller &
19 Flexner for Barclays Capital, and with me
20 today is Michelle Sekowski.
21 MS. SCHAFFER: Tracy Schaffer from
22 Jones Day representing LBHI.
23 MR. MILLS: Carl Mills from Hughes,
24 Hubbard & Reed representing James W.
25 Giddens, SIPA Trustee.

1 M. Fazio
2 MS. TAGGART: Erica Taggart with
3 Quinn, Emanuel, Urquhart, Oliver & Hedges
4 for the Committee and also the witness, and
5 I'm here with Tyler Whitmer.
6 THE VIDEOGRAPHER: Will the court
7 reporter please swear in the witness.
8 * * *
9 MICHAEL A. FAZIO, called as a
10 witness, having been duly sworn by a
11 Notary Public, was examined and testified
12 as follows:
13 EXAMINATION BY
14 MR. STERN:
15 Q. Good morning, Mr. Fazio.
16 A. Good morning.
17 Q. What is your current position at
18 Houlihan?
19 A. I'm managing director at Houlihan &
20 Lokey.
21 Q. And was that your position in
22 September of 2008?
23 A. That was.
24 Q. In September 2008 did you attend the
25 hearing in the Lehman Brothers bankruptcy case

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Page 9

1 M. Fazio
2 to approve the sale transaction involving
3 Barclays and Lehman?
4 A. Can you be more specific on what
5 date?
6 Q. That was a hearing on September 19th,
7 which was a Friday.
8 A. Yes, I was there.
9 Q. When you arrived at the courthouse,
10 did you have any discussions with anyone from
11 Lehman or Barclays?
12 A. Generally, no. It would have been
13 more discussions with the Houlihan people and
14 Milbank people at the time.
15 Q. Do you recall that during the course
16 of that hearing there was a recess in the
17 proceeding?
18 A. Yes.
19 Q. Did you participate in that recess?
20 MS. TAGGART: Object to form.
21 A. I don't know what you mean in terms
22 of participate.
23 Q. Let me ask you, what did you do
24 during that recess?
25 A. I was with my partner and we would,

1 M. Fazio
2 you know, I'd overhear some parts of
3 conversations, but I was not an active
4 participant in any of those conversations with
5 various people from the estate, Barclays or
6 whoever was participating.
7 Q. Which partner are you referring to?
8 A. It would have been the estate and
9 Barclays and -- the estate being Weil, Gotshal.
10 Q. You said you were with your partner.
11 A. That's correct.
12 Q. Who was that?
13 A. Saul Burian.
14 Q. And what do you recall was said by
15 representatives of the estate during that
16 recess?
17 A. I was not an active participant and
18 could barely overhear. There were big crowds of
19 people that were gathered around, so I was on
20 the outskirts so I don't have an active
21 recollection of exactly what was said and who
22 was saying what to whom.
23 MR. STERN: Let's mark as
24 Exhibit 618A, a one-page document.
25 (Deposition Exhibit 618A, Email dated

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Page 11

1 M. Fazio
2 9/18/08 from Fazio to Geer, Bates stamped
3 HLHZ0016316, marked for identification, as
4 of this date.)
5 BY MR. STERN:
6 Q. Mr. Fazio, I've put in front of you a
7 document that we've marked as Exhibit 618A.
8 Can you tell me what this is?
9 A. It's an email from myself to Brad
10 Geer asking him to listen to the Barclays
11 investor call or have somebody listen to the
12 investor call.
13 Q. And why did you write this email?
14 A. I was -- I had understood that there
15 was an investor call that Barclays was having
16 and I wanted to see if we could get additional
17 information with respect to the transaction.
18 Q. Had you listened to that call?
19 A. No, I have not.
20 Q. And at the time you wrote this email,
21 you had not listened to it.
22 A. That's correct.
23 Q. How did you learn of that call?
24 A. I do not know, recall, how I learned
25 of the call.

1 M. Fazio
2 Q. Do you know if Mr. Geer did in fact
3 listen to that call?
4 A. I do not recall.
5 Q. Did you ever get a report from him
6 concerning that call?
7 A. No.
8 Q. Do you recall getting a report from
9 anyone concerning the substance of that call?
10 A. No, I do not.
11 Q. After the September 19th hearing that
12 we just referred to, what was your next
13 involvement in connection with the
14 Barclays/Lehman sale transaction?
15 A. I attended two full days of
16 discussion on the 20th and 21st, or yeah, that's
17 Saturday and a Sunday, that's correct.
18 Q. And what were your primary areas of
19 activity over that weekend, you personally?
20 A. To understand the transaction as best
21 we could, to get information with respect to the
22 transaction and the securities that were being
23 transferred and the liabilities being assumed as
24 part of the transaction.
25 Q. What work did you do over that

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Page 13

1 M. Fazio
2 weekend to understand the securities being
3 transferred?
4 MS. TAGGART: Objection. Calling for
5 potential privilege or work product
6 information.
7 You can describe generally the
8 activities, but I caution you not to go
9 into any internal Houlihan, if there's any,
10 projects or analysis at this time.
11 THE WITNESS: Okay.
12 A. Can you restate the question?
13 MR. STERN: Do you want to reread it?
14 (Question was read back as follows:
15 "QUESTION: What work did you do over
16 that weekend to understand the securities
17 being transferred?")
18 A. We had meetings with the debtors and
19 we had a meeting with representatives from
20 Barclays associated on the 20th and 21st
21 meetings that we had to understand that.
22 Q. Did you review any written material
23 concerning the securities?
24 A. I was generally involved in projects
25 at Houlihan to understand or attempt to

1 M. Fazio
2 understand the securities being transferred,
3 yes.
4 Q. What types of written material were
5 you given?
6 MS. TAGGART: Objection and could
7 call for privileged information.
8 I'd ask you not to reveal any, if
9 there are any, written documents that were
10 generated by Houlihan, but you should
11 answer if you were given any documents by
12 anyone such -- beyond Houlihan or your
13 lawyers, including from Lehman or Barclays
14 or any of their representatives.
15 A. I was given no information from
16 the -- from Barclays or from Lehman with respect
17 to the transaction.
18 Q. You were given no written information
19 concerning the securities?
20 A. That's correct.
21 Q. Is it your recollection that you were
22 not provided a spreadsheet of securities being
23 transferred in connection with the transaction?
24 A. Again, not from anybody, from
25 Barclays or the estate.

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Page 15

1 M. Fazio
2 Q. Did you receive spreadsheets from any
3 other source?
4 MS. TAGGART: It's okay. You can
5 answer.
6 A. I would have received information
7 from our lawyers with respect to securities
8 which represent securities that were indicated
9 to us being a detail of securities from earlier
10 in the week that were thought to being
11 transferred.
12 Q. What did you do to analyze that
13 information?
14 MS. TAGGART: I'm going to object to
15 the extent it calls for any internal
16 Houlihan analysis.
17 But you can describe either any
18 general tasks that you did or any
19 correspondence with anyone outside of
20 Houlihan or your attorneys.
21 A. We had correspondence with Jim Seery,
22 with Mr. Klein, who was Barclays' investment
23 banker, with respect to the securities being
24 transferred on that, on the Friday. It was
25 Saturday and Sunday.

1 M. Fazio
2 Q. When you say "correspondence," do you
3 mean face-to-face meetings?
4 A. That's correct.
5 Q. Aside from discussions concerning the
6 securities, did you do any independent analysis
7 of the composition of those securities?
8 MS. TAGGART: I'm going to object on
9 attorney-client and work product privilege.
10 If you did any analysis that you
11 shared with anyone other than Houlihan and
12 your attorneys, you should go ahead and
13 answer, otherwise I'd instruct you not to
14 answer any analysis that was internal
15 Houlihan or correspondence with your
16 attorneys.
17 A. I did internal analysis.
18 Q. Did you draw any conclusions as a
19 result of that analysis concerning the value of
20 the securities you reviewed?
21 MS. TAGGART: You can -- hold on.
22 I'm going to object on
23 attorney-client and work product privilege
24 and instruct you not to answer.
25 BY MR. STERN:

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Page 17

1 M. Fazio
2 Q. I show you next a document that we
3 previously marked as Exhibit 461B.
4 Looking at Exhibit 461B, can you tell
5 me what this is?
6 A. It appears to be an email from Brian
7 Kelly from Milbank to myself and Ann Makowski,
8 which has detailed spreadsheets associated with
9 a list of securities that were detailed and
10 alleged to be the securities that were being
11 transferred on the -- associated with the sale.
12 Q. Do you know who provided this
13 information to Mr. Kelly?
14 A. I do not.
15 Q. Did you review the attached
16 spreadsheets and information on September 21,
17 2008?
18 A. Yes, I did.
19 Q. What type of analysis did you do
20 concerning the securities listed in the
21 spreadsheet?
22 MS. TAGGART: I'm going to object on
23 attorney-client and work product privilege
24 and instruct not to answer.
25 BY MR. STERN:

1 M. Fazio
2 Q. Did you do anything to determine
3 whether there was a publicly available pricing
4 source concerning the securities listed on the
5 spreadsheet?
6 MS. TAGGART: Object to form.
7 But you can answer.
8 A. I had staff that reported to me do
9 some analysis with respect to the ability to get
10 prices on some of the securities in the
11 analysis, yes.
12 Q. And what did they report to you?
13 MS. TAGGART: I'm going to object and
14 instruct you not to answer on
15 attorney-client and work product privilege.
16 BY MR. STERN:
17 Q. Was your staff able to obtain
18 publicly available pricing information for all
19 of the securities on the spreadsheets?
20 MS. TAGGART: Hold on.
21 You can answer that yes or no.
22 A. No.
23 Q. Do you recall approximately what
24 percentage of the securities your staff was able
25 to obtain publicly available pricing information

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Page 19

1 M. Fazio
2 for?
3 MS. TAGGART: I'm going to object and
4 instruct not to answer on privilege.
5 BY MR. STERN:
6 Q. I ask you to please look at the third
7 page of this exhibit. Right there (indicating),
8 that summary sheet. It may be the second page
9 of your copy.
10 A. It's the second page, yes.
11 Q. The second page of the exhibit.
12 At the top it has a line that reads,
13 "Collateral" and then next to that it says,
14 "Market Value."
15 Do you see that?
16 A. Yes, I do.
17 Q. Is this a summary sheet that you
18 reviewed at the time that you received it?
19 A. Yes.
20 Q. And what was your understanding at
21 that time concerning the information reflected
22 here?
23 MS. TAGGART: Object to form.
24 I'm sorry. At what time?
25 BY MR. STERN:

1 M. Fazio
2 Q. At the time you received this.
3 MS. TAGGART: You can answer.
4 A. On the Sunday that I received this,
5 and I don't know exactly what time, but my
6 understanding after having different discussions
7 with people that the market values were market
8 values associated with collateral earlier in the
9 week.
10 Q. And were you ever told who assigned
11 those market values to the collateral?
12 A. I was told that it came off of the
13 Lehman system earlier in the week.
14 Q. Were you given a date earlier in the
15 week?
16 A. I was given Monday, Tuesday time
17 periods.
18 Q. And with respect to the line that
19 says "TP cash" and has a figure of \$7 billion
20 next to that, what understanding did you have
21 concerning that information?
22 A. There was discussion of whether or
23 not securities or cash were being transferred
24 from JPMorgan associated with the transaction,
25 and it was unclear whether securities would be

Page 20

Page 21

1 M. Fazio
2 being transferred are cash and the cash was said
3 to be \$7 billion. If the final securities that
4 were going over in cash in total, they were
5 looking at it and trying to figure out what
6 would be transferred. So it was indicated that
7 at the time it was \$7 billion of cash they
8 thought would be being transferred.
9 Q. And when you and others on behalf of
10 the committee learned that, did you discuss that
11 fact with anyone representing the estate?
12 MS. TAGGART: Object to form.
13 You can answer.
14 A. We would -- we had discussions with
15 Jim Seery with respect to the transaction and
16 the securities and cash.
17 Q. Did anybody acting on behalf of the
18 committee object that this cash was being
19 transferred in connection with the transaction?
20 MS. TAGGART: Objection. Foundation.
21 THE WITNESS: Repeat the question?
22 Sorry.
23 (Question was read back as follows:
24 "QUESTION: Did anybody acting on
25 behalf of the committee object that this

1 M. Fazio
2 cash was being transferred in connection
3 with the transaction?")
4 A. We were looking at the transaction as
5 a whole, so there were liabilities being assumed
6 and assets being transferred, so there was
7 discussion with respect to the transaction and
8 the components of the transaction and
9 understanding what was being transferred.
10 So since we did not have a detailed
11 schedule that people had said had been a final
12 schedule of securities or cash being
13 transferred, we had nothing to object to at that
14 time.
15 Q. At the time you received this
16 information which reflects a transfer of cash of
17 \$7 billion, was it your understanding that such
18 cash would be transferred to Barclays or had
19 been transferred to Barclays?
20 MR. MILLS: Object to the form.
21 A. My understanding was that the estate
22 and Barclays were trying to figure out exactly
23 what securities they had and what was being
24 transferred associated with the transaction over
25 the weekend.

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Page 23

1 M. Fazio
2 Q. Were you ever told that one possible
3 approach to the transaction was that Barclays
4 would retain the \$7 billion in cash?
5 A. If the total securities were not as
6 represented, the value of the securities was not
7 as total represented, there would have to be a
8 cash component to equate to the transaction that
9 was represented court.
10 Q. And that was cash from the LBI
11 estate, correct?
12 MS. TAGGART: Object to form.
13 A. I'm not sure where the cash and who
14 the repository of the cash was with and the
15 rightful owner of it, but it was, from the
16 estate, cash would have been had to have come
17 from the estate for the transaction.
18 Q. And did the committee or anybody
19 acting on behalf of the committee or anyone else
20 in attendance that weekend, to your knowledge,
21 object to the possibility that such cash would
22 be included in the transaction?
23 MS. TAGGART: Object to form and
24 foundation.
25 BY MR. STERN:

1 M. Fazio
2 Q. If you remember.
3 A. The transaction was discussed as a
4 whole so individual components, since we did not
5 have a detailed schedule at all throughout this
6 of any detail which showed the final securities
7 in cash being transferred, there was nothing to
8 object to.
9 Q. This makes reference to \$7 billion in
10 cash.
11 My question is this: Did anyone, to
12 your knowledge, object to the transfer of such
13 cash over the preclosing weekend?
14 MS. TAGGART: Objection. Asked and
15 answered. Form, foundation.
16 BY MR. STERN:
17 Q. You can answer.
18 A. Since the transaction is taken as a
19 whole, we were not given final cash numbers or
20 securities being transferred so there was
21 nothing to object to.
22 Q. I understand that.
23 Did anyone object, to your knowledge,
24 to the possibility that \$7 billion in cash was
25 to be transferred as a part of the transaction?

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Page 25

1 M. Fazio
2 MS. TAGGART: It's been now asked and
3 answered four times.
4 I object to form and foundation.
5 You can answer it one more time.
6 MR. STERN: I don't think it's been
7 answered.
8 Can you repeat the question?
9 (Question was read back as follows:
10 "QUESTION: Did anyone object, to
11 your knowledge, to the possibility that
12 \$7 billion in cash was to be transferred as
13 a part of the transaction?")
14 A. As I've stated before, since the
15 transaction as a whole, we did not have detail
16 of which securities were being transferred or
17 what cash was being transferred with the
18 securities to offset the liabilities being
19 assumed by Barclays, we did not have anything to
20 object to at the time associated with cash or
21 securities being transferred.
22 Q. You had a summary sheet indicating
23 that \$7 billion in cash was included as part of
24 the assets being transferred to Barclays.
25 And my question is this: Did anyone,

1 M. Fazio
2 to your knowledge, object to the inclusion of
3 that cash in the transaction?
4 MS. TAGGART: Object to --
5 MR. MILLS: Objection to the form.
6 MS. TAGGART: Object to the form, to
7 the preface. It's argumentive. It's been
8 asked and answered. And also to
9 foundation.
10 A. I believe I've answered the question
11 numerous times, but I'll answer it again for
12 you.
13 When we looked at the detail and we
14 had discussions about the detail of securities
15 and cash being transferred, we did not have a
16 final list of securities or cash being
17 transferred associated with the transaction and
18 so there was nothing to object to associated
19 with the transaction since we did not have
20 information on the final securities or cash
21 being transferred.
22 Q. At some point did Houlihan learn that
23 the \$7 billion in cash would be included in the
24 transaction?
25 MS. TAGGART: Object to foundation.

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Page 27

1 M. Fazio
2 MR. MILLS: Objection.
3 MS. TAGGART: Go ahead.
4 A. I believe that subsequently and
5 subsequent information that came out and
6 Barclays indicating that they had not received
7 the cash, it had come to light that there was
8 \$7 billion that was being transferred associated
9 with the transaction that had not gotten
10 transferred that Barclays was claiming that was
11 owed to them.
12 Q. Did the committee learn at any point
13 that the \$7 billion in cash had initially been
14 transferred to Barclays but then had been
15 removed by JPMorgan?
16 MS. TAGGART: Object to form.
17 Foundation.
18 A. I'm not aware.
19 Q. You don't know?
20 A. I don't know.
21 Q. Okay. Going back to the time when
22 you received Exhibit 461B and saw the reference
23 to \$7 billion in cash, do you have any specific
24 recollection of anyone acting on behalf of the
25 Creditors Committee telling representatives of

1 M. Fazio
2 Lehman or Barclays that that cash should not be
3 included in the final transaction?
4 MS. TAGGART: Objection. Asked and
5 answered. Form, foundation.
6 BY MR. STERN:
7 Q. Do you have any such recollection?
8 A. As I have stated before, we were
9 given this sheet. It was indicated that we did
10 not have the final securities being transferred
11 nor the cash balance associated with the
12 transaction, so there was nothing to object to
13 since we did not have the final form and
14 securities that were being transferred.
15 Q. Putting aside the question of the
16 market value of the securities listed in
17 Exhibit 461B, did anyone indicate to you over
18 the preclosing weekend that Barclays would not
19 receive the securities listed in Exhibit 461B?
20 MS. TAGGART: Object to form.
21 A. There was discussion that the
22 Barclays people and the estate people were
23 trying to reconcile the exact securities that
24 were being transferred because they had to
25 reconcile what securities remained in the

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Page 29

1 M. Fazio
2 possession of Lehman, and so there was question
3 as to which securities would finally be
4 transferred associated with the transaction
5 because they had to make sure that the
6 securities were in the possession of Lehman
7 Brothers.
8 Q. Did you have an understanding that
9 certain securities had already been transferred
10 to Barclays as of that preclosing weekend?
11 A. At the time, I was not aware that
12 some securities might have been transferred to
13 Barclays at that time.
14 Q. Were you familiar with the fact that
15 Barclays had replaced the Fed's financing of LBI
16 prior to the preclosing weekend?
17 MS. TAGGART: Object to form.
18 A. Not prior to the preclosing weekend.
19 During the weekend I became aware of
20 that, yes.
21 Q. During the September 19th hearing, do
22 you recall Mr. Miller informing the court that
23 Barclays had replaced the Fed's financing and
24 received the securities that had been pledged to
25 the Fed?

1 M. Fazio
2 MS. TAGGART: Object to form.
3 BY MR. STERN:
4 Q. Do you recall that?
5 A. I recall discussions over the weekend
6 about Barclays stepping into the shoes of the
7 Fed.
8 I don't remember if it was at the
9 hearing on Friday or over the weekend, but I was
10 not sure whether or not that transaction also
11 had taken place or that it was stepping into the
12 shoes and had guaranteed to step into the shoes
13 to the Fed, and whether or not the securities
14 had been transferred and whether Barclays had
15 actually paid off the Fed. I was unaware
16 whether or not that had happened on the Friday
17 or over the weekend.
18 Q. Over the weekend did you learn that
19 it had happened?
20 A. There was --
21 MS. TAGGART: Object to form.
22 A. There was discussion that it had
23 happened, but there was still a lot of
24 reconciliations going on of what securities that
25 Barclays was getting associated with that

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1 M. Fazio
2 transaction also.
3 Q. But with respect to the securities
4 that had already been transferred, did you have
5 an understanding that this list contained in
6 Exhibit 461B reflected those securities?
7 A. No. I had an understanding that
8 these were securities earlier in the week, that
9 thought that Lehman had that they were being
10 transferred over to Barclays as part of the Fed
11 transaction and the whole transaction that was
12 being discussed on court on Friday.
13 Q. You did not have an understanding
14 that the securities listed in 461B had already
15 been transferred to Barclays as a part of its
16 replacement of the Fed?
17 A. No.
18 MS. TAGGART: Asked and answered.
19 BY MR. STERN:
20 Q. Okay. At some point did you learn
21 that?
22 A. I still to this day do not know or
23 have a detailed list from Barclays or the estate
24 of the exact securities transferred as of today
25 and the market values of those securities that

1 M. Fazio
2 were being transferred on Friday, the 19th or on
3 Monday, the 21st.
4 I'm sure Monday is the 22nd. I
5 apologize.
6 Q. So it's your testimony that as of
7 today you still do not have a complete list of
8 the securities that Barclays received in
9 connection with its replacement of the Fed. Is
10 that your testimony?
11 A. The testimony and I think what I just
12 said was that we do not have a listing from
13 Barclays of all the securities that they have
14 received associated with this transaction and
15 the market value of those securities as of the
16 close of the business on the 19th. As of today
17 we do not have that listing.
18 Q. Did you ever receive Schedule A to
19 the Clarification Letter?
20 MS. TAGGART: Object to form.
21 And now you're asking him personally?
22 Go ahead.
23 A. Sorry. Repeat the question. I'm
24 sorry.
25 Q. Did you ever receive Schedule A to

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1 M. Fazio
2 the Clarification Letter?
3 A. I have received what has been
4 indicated to be Schedule A of the Clarification
5 Letter, yes.
6 Q. Have you received Annex A to the
7 settlement between LBI, JPMorgan and Barclays --
8 MS. TAGGART: Object to form.
9 BY MR. STERN:
10 Q. -- concerning the \$7 billion
11 shortfall?
12 A. I would have to look at it to see
13 what annex A is, but I might have seen it but
14 I'd have to see it in front of me.
15 Q. Okay.
16 MS. TAGGART: Jack, can we take a
17 quick break?
18 MR. STERN: Sure.
19 MS. TAGGART: I'll just be a couple
20 minutes.
21 THE VIDEOGRAPHER: The time is 10:04
22 a.m. We're going off the record.
23 (Recess is taken.)
24 THE VIDEOGRAPHER: The time is 10:07
25 a.m. We're back on the record.

1 M. Fazio
2 BY MR. STERN:
3 Q. Focusing again on the second page of
4 Exhibit 461B, it lists a total amount there of
5 \$49.9 billion.
6 Do you see that?
7 A. Yes, I do.
8 Q. At some point over the preclosing
9 weekend did you learn the amount of the
10 financing that Barclays had assumed in replacing
11 the Fed, the loan amount that is?
12 A. I was told that it was \$45.5 billion,
13 yes.
14 Q. And over that preclosing weekend, did
15 you raise any questions concerning the
16 difference between that \$45 billion amount and
17 this \$49.9 billion amount?
18 A. Yes.
19 Q. With whom did you raise those
20 questions?
21 A. I had discussions Jim Seery and
22 discussions with Mr. Klein.
23 Q. And what did you discuss on that
24 subject with Mr. Seery?
25 A. I discussed wanting a detailed

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1 M. Fazio
2 listing of the collateral that was being
3 transferred associated with the transaction and
4 the market values associated with the securities
5 being transferred.
6 Q. What types of -- withdrawn.
7 What market values did you want?
8 A. I wanted the closing market values as
9 of September 19th.
10 Q. From Lehman?
11 A. Yes.
12 Q. And did you ever discuss with
13 Mr. Seery any concern about a \$5 billion
14 mismatch or difference between the \$49.9 billion
15 figure on Exhibit 461B and the \$45 billion
16 amount of the loan?
17 MS. TAGGART: Object to form.
18 THE WITNESS: Repeat the question?
19 (Question was read back as follows:
20 "QUESTION: And did you ever discuss
21 with Mr. Seery any concern about a
22 \$5 billion mismatch or difference between
23 the \$49.9 billion figure on Exhibit 461B
24 and the \$45 billion amount of the loan?")
25 A. We discussed the fair value of the

1 M. Fazio
2 securities being transferred associated with the
3 transaction. It was more of a discussion of the
4 assets being transferred as opposed to the
5 \$47.7 billion of securities that were supposed
6 to be transferred as part of the transaction.
7 Q. My question focuses on the
8 \$49.9 billion figure that is listed on
9 Exhibit 461B.
10 Did you have any discussion with
11 Mr. Seery concerning the difference between that
12 amount and the \$45 billion amount of the loan?
13 MS. TAGGART: Object to form. Asked
14 and answered.
15 A. We had discussions about the assets
16 being transferred, the liabilities being assumed
17 as part of the transaction, yes.
18 Q. And were you able, was Houlihan able,
19 based on the information it had available to it,
20 to come to any assessment of the fair value of
21 the securities that were listed on Exhibit 461B?
22 MS. TAGGART: You can answer that yes
23 or no or I don't know.
24 A. No.
25 Q. And is that because public pricing

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1 M. Fazio
2 information was not available concerning many of
3 the securities listed?
4 MS. TAGGART: I'm going to object and
5 instruct not to answer on attorney-client
6 and work product privilege.
7 BY MR. STERN:
8 Q. Approximately when over this
9 preclosing weekend did you have your discussions
10 with Mr. Seery?
11 A. I believe it was on Sunday. I don't
12 have a time.
13 Q. Let me show you a document that we've
14 previously marked as Exhibit 460B.
15 MR. STERN: We do not have many
16 copies of this given the size but...
17 (Document review.)
18 BY MR. STERN:
19 Q. This appears to be an email from
20 David Murgio at Weil, Gotshal to Bob Moore at
21 Milbank, and it attaches two documents, two
22 Excel spreadsheets; one labeled "Schedule A" and
23 one labeled "Schedule B."
24 Did you understand in connection with
25 the closing of the sale transaction that there

1 M. Fazio
2 was a Schedule A listing certain securities and
3 a Schedule B listing certain securities?
4 A. Yes.
5 Q. And what was your understanding of
6 what Schedule A was?
7 MS. TAGGART: Object to form.
8 BY MR. STERN:
9 Q. Or what Schedule A was intended to
10 be.
11 MS. TAGGART: Same objection.
12 A. Schedule A was and Schedule B were to
13 represent securities being transferred to
14 Barclays as part of the sale.
15 Q. And did Houlihan do any further
16 review of Schedule A and Schedule B after the
17 closing?
18 MS. TAGGART: I'm going to object and
19 instruct not to answer on privilege.
20 BY MR. STERN:
21 Q. After the closing, did Houlihan have
22 any discussions with anyone representing Lehman
23 or Barclays concerning the identity or value of
24 the securities listed on Schedule A and Schedule
25 B?

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1 M. Fazio
2 A. Yes.
3 Q. When was the first such discussion
4 with representatives of Lehman?
5 A. I don't have an exact recollection,
6 but it would have been in the week or following
7 that week, so it would have been the week of
8 September 22nd or September 29th.
9 Q. And what was the substance of those
10 discussions with Lehman representatives?
11 A. The substance of those discussions
12 were to attempt to get a detailed listing of the
13 securities being transferred associated with the
14 transaction, as well as the market values as of
15 the closing date.
16 Q. And with whom did you have those
17 discussions?
18 A. We had discussions with Paolo
19 Tonucci. We had discussions with the A&M
20 representatives throughout the following
21 two weeks.
22 Q. And did Houlihan in those discussions
23 express any concerns relating to the value of
24 the securities on Schedule A?
25 MS. TAGGART: Object to form.

1 M. Fazio
2 A. We raised concerns of not having a
3 detailed list of the securities or the market
4 values associated with that transaction.
5 Q. Did Houlihan do anything to itself
6 evaluate the value of the securities on the
7 Schedule A listing that Houlihan did have at
8 that time?
9 MS. TAGGART: I'm going to object and
10 instruct not to answer on work product and
11 attorney-client privilege.
12 BY MR. STERN:
13 Q. After the closing, did you
14 participate in any discussions with Weil,
15 Gotshal concerning the value of the securities
16 transferred to Barclays as a part of the Fed
17 replacement?
18 MS. TAGGART: Object to form.
19 You can answer.
20 A. I do not believe so.
21 Q. Do you know whether anyone else from
22 Houlihan did?
23 MS. TAGGART: Object to form.
24 Foundation.
25 A. I do not know.

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1 M. Fazio
2 Q. Do you know whether after the closing
3 Houlihan had any discussions with anyone acting
4 on behalf of Lehman concerning the difference
5 between the repo loan amount and the value of
6 the securities listed on the Schedule A?
7 MS. TAGGART: Object to form.
8 A. We had numerous conversations with
9 the Alvarez & Marsal people with respect to the
10 value of the securities and the identification
11 of those securities that were being transferred
12 as part of the transaction.
13 Q. And your best recollection is that
14 those discussions with Alvarez took place
15 sometime after the closing?
16 A. Yes.
17 Q. And that would have been the week of
18 September 22nd or the week of September 29th?
19 A. Yes.
20 Q. Do you have any recollection one way
21 or the other concerning whether those
22 discussions began the week of September 22nd or
23 the week of September 29th?
24 A. I believe they would have began the
25 week of September 22nd, but I don't have

1 M. Fazio
2 specific dates.
3 Q. And in those discussions with
4 Alvarez, did Houlihan raise any concern about a
5 \$5 billion mismatch between the amount of the
6 repo loan, \$45 billion, and the market value
7 listed in Exhibit 461B of \$49.9 billion?
8 MS. TAGGART: Object to form.
9 A. We raised questions as to which
10 securities and the value of those securities
11 that were being transferred associated with the
12 transaction.
13 Q. Did you raise any concerns relating
14 to the difference between the loan amount and
15 the value of the securities that were
16 transferred in connection with that repo
17 replacement?
18 MS. TAGGART: Object to form.
19 A. We were concerned with the value of
20 all the securities that were being transferred,
21 as well as the loan that was being assumed as
22 part of this transaction, yes.
23 Q. And at that point in time after the
24 closing, did Houlihan do anything to access
25 publicly available information from Bloomberg or

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1 M. Fazio
2 other sources concerning the value of the
3 securities on the list that you had at that
4 time?
5 MS. TAGGART: I'm going to object and
6 instruct not to answer on privilege.
7 BY MR. STERN:
8 Q. Let me show you a document that's
9 previously been marked as Exhibit 504.
10 Do you recognize this series of
11 emails?
12 A. Yes.
13 Q. And what are they?
14 A. They are emails to and from Luc
15 Despins associated with request for information
16 from Lori Fife at Weil, Gotshal.
17 Q. Looking at the first page of this
18 exhibit at the bottom, there is an email from
19 Mr. Despins to Lori Fife copying you and
20 Mr. Geer and Mr. Bell, and he writes, "Lori,
21 this is not in connection with sealing motion,
22 although I want to know more about the schedules
23 before that issue is up before the court, but
24 rather our concern is with respect to the
25 securities which were transferred. Houlihan has

1 M. Fazio
2 reviewed them and cannot even come close to the
3 amount which was announced in court. I think it
4 was \$47.4 billion. And there is also a
5 discrepancy on the liability side, although it
6 could be much smaller than the issue on the
7 asset side. Houlihan's review would indicate
8 that the securities transferred could be worth
9 billions more than the \$47.4 billion. There may
10 very well be a logical explanation for all of
11 this, which is why the first meeting is just to
12 explore the issues."
13 You see that Mr. Despins says that
14 "Houlihan has reviewed them and cannot even come
15 close to the amount which was announced in
16 court."
17 What analysis had Houlihan done that
18 led Mr. Despins to make that comment.
19 MS. TAGGART: I'm going to object and
20 instruct not to answer on attorney-client
21 and work product privilege.
22 BY MR. STERN:
23 Q. Mr. Despins tells Weil, Gotshal that
24 Houlihan had done an analysis of the securities.
25 Do you see that?

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1 M. Fazio
2 A. Yes.
3 Q. What analysis had Houlihan done?
4 MS. TAGGART: Same objection and
5 instruction.
6 BY MR. STERN:
7 Q. What figure for market value had
8 Houlihan arrived at as a result of its analysis?
9 MS. TAGGART: I'm going to object and
10 instruct not to answer on privilege.
11 BY MR. STERN:
12 Q. Mr. Despins writes, "Houlihan's
13 review would indicate that the securities
14 transferred could be worth billions more than
15 the \$47.4 billion."
16 Do you see that?
17 A. Yes, I do.
18 Q. Do you recall how many billions more
19 Houlihan's review indicated at the time?
20 MS. TAGGART: Objection. And
21 instruct you not to answer on
22 attorney-client and work product
23 privileges.
24 BY MR. STERN:
25 Q. Was Houlihan's review at the time

1 M. Fazio
2 reflected in writing?
3 MS. TAGGART: You can answer yes or
4 no.
5 A. We would have had written material
6 associated with our work.
7 Q. And that written material, according
8 to Mr. Despins, would indicate that the
9 securities transferred could be worth billions
10 more than the \$47.4 billion; is that right?
11 MS. TAGGART: I'm going to object and
12 instruct not to answer on privilege.
13 BY MR. STERN:
14 Q. Following this series of emails, was
15 there a meeting?
16 MS. TAGGART: Object to form.
17 A. There were follow-up meetings
18 subsequently with the estate and -- I'll see,
19 this is October 15th. There was always constant
20 meetings between the estate and the advisors.
21 Q. I understand that, but with respect
22 to this specific request concerning Houlihan's
23 review indicating that the securities
24 transferred could be worth billions more than
25 the \$47.4 billion, was there a follow-up

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1 M. Fazio
2 meeting?
3 MS. TAGGART: Object to form and
4 foundation.
5 A. I do not believe that between the
6 parties that are listed here there was a meeting
7 that was set up with respect to this email
8 chain.
9 Q. Was there a meeting between anyone
10 else acting on behalf of the committee or anyone
11 else acting on behalf of Lehman concerning that
12 issue?
13 MS. TAGGART: Object to form and
14 foundation.
15 A. We would have meetings with the
16 estate on a regular basis and this was one of
17 the topics we would continually ask them to get
18 a detailed listing of the securities and the
19 market values as to the close of the business
20 on the 19th.
21 Q. Did the estate ever provide Houlihan
22 with any information that indicated that the
23 securities transferred were not worth billions
24 more than the \$47.4 billion?
25 MS. TAGGART: Object to form.

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1 M. Fazio
2 as a result of its review indicating that the
3 securities transferred could be worth billions
4 more than \$47.4 billion?
5 MS. TAGGART: Object to form,
6 foundation and also privilege.
7 You should not disclose anything you
8 did either internally with Houlihan or in
9 correspondence with your counsel.
10 But if you took any actions that you
11 know of with anyone other than that, go
12 ahead and answer.
13 A. I had numerous meetings with the
14 Alvarez & Marsal people to continually ask to
15 follow up and get information associated with
16 the transaction, including the final securities
17 that actually were transferred and the fair
18 value of those on the 19th.
19 Q. And what types of information did you
20 receive?
21 A. I received no final listing from
22 anybody associated with the transaction.
23 Q. What types of information did you
24 receive?
25 A. I received no information that had

1 M. Fazio
2 Foundation.
3 Could you limit that at all by time?
4 BY MR. STERN:
5 Q. Can you answer?
6 THE WITNESS: Can you repeat the
7 question then?
8 MS. TAGGART: Okay. You can answer
9 yes or no to that.
10 And you can reread the question
11 again.
12 (Question was read back as follows:
13 "QUESTION: Did the estate ever
14 provide Houlihan with any information that
15 indicated that the securities transferred
16 were not worth billions more than the \$47.4
17 billion?")
18 A. To my knowledge, I have never
19 received anything from the estate that has
20 detailed the final securities transferred and
21 the market value as of the close of business on
22 the 19th.
23 Q. Aside from this email request and
24 whatever meetings followed from it, what did
25 Houlihan do to address any concern that it had

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1 M. Fazio
2 detailed information associated with the
3 transaction.
4 Q. I'm not asking what you did not
5 receive.
6 I'm asking what did you receive.
7 A. All we had were discussions. I never
8 received any of their work products associated
9 with any detailed analysis that they may have
10 been doing.
11 To the best of my knowledge, they
12 have not received a final listing either from
13 anybody associated with the transaction,
14 associated with which securities and the fair
15 market value as of the 19th.
16 Q. Did that concern you as of late
17 September, early October of 2008?
18 MS. TAGGART: Object to form.
19 A. Yes.
20 Q. What did you do about that concern?
21 MS. TAGGART: Objection. Form,
22 foundation. Asked and answered.
23 And I'll make the same privilege
24 instruction. If you have anything to add
25 of anything you did besides working

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1 M. Fazio
2 internally at Houlihan or in communications
3 with your counsel.
4 A. I had numerous discussions with the
5 Alvarez & Marsal people.
6 Q. Did you feel they were not responding
7 to your concern?
8 MS. SCHAFFER: Objection to the form.
9 MS. TAGGART: Same objection.
10 A. I felt that they were taking my
11 concern and my request very seriously and they
12 were trying to get the same information I was.
13 Q. And describe for me exactly what your
14 concern was.
15 MS. TAGGART: Object to form.
16 A. When you have a transaction, you
17 usually have a detailed listing of every asset
18 and the assumed liabilities associated with the
19 transaction, and the fair market value of those
20 assets and liabilities.
21 We did not have this and still do not
22 have this associated with this transaction.
23 Q. So it's your testimony that as of
24 today you still do not have that information.
25 MS. TAGGART: Object to form.

1 M. Fazio
2 Foundation.
3 A. Absolutely.
4 Q. Is there anything that you've
5 received between September 2008 and today that
6 has provided you with any more information
7 concerning the purchased assets and the assumed
8 liabilities and their respective value?
9 MS. TAGGART: Object to form and
10 privilege as currently worded, so I'll
11 instruct not to answer on attorney-client
12 and work product.
13 BY MR. STERN:
14 Q. Is there anything you've received
15 from parties other than the committee or counsel
16 to the committee or other people from Houlihan
17 that has provided you with that information?
18 MS. TAGGART: Object to form.
19 MR. STERN: Let me rephrase it.
20 BY MR. STERN:
21 Q. Aside from communications with
22 counsel, aside from communications with
23 committee or within Houlihan, is there anything
24 that you've received since September 2008 that
25 has provided you with more information

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1 M. Fazio
2 concerning the assets purchased and the
3 liabilities assumed? Is there anything?
4 MS. TAGGART: Object to form.
5 A. I may have seen information that
6 Alvarez & Marsal was working on associated with
7 some of the liabilities, the cure amounts and
8 analysis of that, but nothing with respect to
9 the detailed analysis of the securities being
10 transferred and their fair market value.
11 Q. So it's your testimony that between
12 September of 2008 and today, you have not
13 received any further information from either
14 Lehman or Barclays concerning the assets
15 purchased and the liabilities assumed and their
16 respective values.
17 MS. TAGGART: Objection.
18 Argumentative.
19 BY MR. STERN:
20 Q. Is that your testimony?
21 MS. TAGGART: I object to form.
22 Mischaracterizes the testimony.
23 If you can understand it, you can
24 answer it.
25 A. Repeat the question.

1 M. Fazio
2 MR. STERN: I do have --let me just
3 before you repeat the question, I just have
4 to note for the record that these
5 objections violate the local rules, and
6 I've been very tolerant of these speaking
7 objections, but going forward I would
8 appreciate it if you would comply with the
9 local rules, Counsel.
10 MS. TAGGART: I think I'm complying
11 with the local rules and I don't think that
12 you're supposed to be asking him to
13 reaffirm his testimony when he just
14 answered the question.
15 MR. STERN: Can you repeat the
16 question?
17 (Question was read back as follows:
18 "QUESTION: So it's your testimony
19 that between September of 2008 and today,
20 you have not received any further
21 information from either Lehman or Barclays
22 concerning the assets purchased and the
23 liabilities assumed and their respective
24 values?")
25 MS. TAGGART: Same objections.

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1 M. Fazio
2 But you can answer.
3 A. To date I have not received from
4 anyone a detailed listing that Barclays and
5 Lehman, the estate, have said these are the
6 final securities and these are their fair market
7 value off of the Lehman systems as of
8 September 19th, 2008, that's correct.
9 Q. Between 2008 and today, have you
10 received any information from Barclays, either
11 directly or through a public sources or through
12 this case, concerning the purchased assets and
13 the assumed liabilities and their respective
14 values?
15 MS. TAGGART: I'm going to object and
16 instruct not to answer on attorney-client
17 and work product privileges, especially
18 where it discusses Houlihan's analysis
19 related to this case.
20 BY MR. STERN:
21 Q. No, my question is only whether you
22 have received anything from Barclays either
23 directly or through filings in this case or
24 public filings.
25 MS. TAGGART: I'll stand by my

1 M. Fazio
2 objection and instruction.
3 BY MR. STERN:
4 Q. Going back to your meetings with
5 Alvarez after the closing, do you recall Alvarez
6 providing Houlihan with any information
7 concerning the Barclays replacement of the Fed
8 repo?
9 A. I'm not sure if they've given us
10 anything with respect to the Fed repo
11 specifically.
12 We have talked about and discussed
13 the whole transaction and trying to get a whole
14 accounting for the entire transaction.
15 Q. After the closing when you met with
16 Alvarez, did FTI participate in some of those
17 meetings?
18 A. They would have been party to some of
19 those meetings.
20 Q. Let's take a look at what has
21 previously been marked as Exhibit 463B.
22 Is this a document that you've seen
23 before?
24 A. Yes, I have.
25 Q. And when did you first see this

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1 M. Fazio
2 document?
3 A. I would have seen it sometime in
4 October of 2008.
5 Q. And skipping the first two pages and
6 looking at the remainder of the document, do you
7 know what that material is?
8 A. It's a summary from Conor Tully,
9 associated with the transaction.
10 Q. Looking at the third page of this
11 exhibit, you see at the bottom it says "Alvarez
12 & Marsal," on the bottom left?
13 A. Yes.
14 Q. And then to the right it says "Draft
15 Barclays Deal Recap"?
16 A. Yes.
17 Q. Do you know whether this summary was
18 prepared by Alvarez?
19 A. I do not know.
20 Q. Looking at this page, do you know
21 when you first received this?
22 A. I would have received or looked at
23 this sometime in October of 2008.
24 Q. And when you received this, did you
25 read it?

1 M. Fazio
2 A. I would have looked at it, yes.
3 Q. And specifically the third page of
4 the document, the third page of this exhibit,
5 which has a column for "Assets" and a column for
6 "Liabilities," do you see that?
7 A. Yes.
8 Q. Do you recall whether you looked at
9 this at the time?
10 A. Yes.
11 Q. You did.
12 A. Yes.
13 Q. It has a line under the "Assets"
14 column that's labeled "Negotiated Mark Haircut."
15 Do you see that?
16 A. Yes, I do.
17 Q. What was your understanding of that
18 line at the time?
19 A. My understanding and further
20 confirmed is that there was a detailed listing
21 of assets that were going to be transferred.
22 The company had a detailed listing which we had
23 seen previously at the time of the closing which
24 showed that the market value of the assets,
25 which were the market value that was prepared at

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1 M. Fazio
2 the beginning of the week, was substantially
3 over the market value at the end of the week,
4 and that \$5 billion is a number that was an
5 approximate number of what they believed the
6 market value had declined between the beginning
7 of the week and the end of the week associated
8 with the assets.

9 Q. And who was the "they" that you just
10 referred to?

11 A. Jim Seery and Mr. Klein, and I would
12 imagine the other people that were working with
13 Mr. Seery and Mr. Klein.

14 Q. And when you received this page that
15 refers to the negotiated mark haircut, did you
16 have any discussion with Alvarez concerning that
17 line?

18 A. Absolutely. I've had discussions
19 with Alvarez in September and October associated
20 with getting a detailed listing of the assets
21 and the market value as of the close of business
22 on the 19th.

23 Q. And what specifically did you discuss
24 with Alvarez concerning the negotiated mark
25 haircut of \$5 billion?

1 M. Fazio
2 A. The discussion was very similar
3 consistently throughout this, which we need a
4 detail of assets and a detail of the market
5 values associated with the transaction, and the
6 value of those securities on the 19th of
7 September.

8 Q. And what did Alvarez tell you
9 concerning this line "Negotiated Mark Haircut"?

10 A. They did not have a detail of the
11 assets and did not have a detail of the assets
12 or the detail of the market values as of the
13 19th.

14 Q. Under that it says, "Assets
15 transferred under repo stale marks."

16 What was your understanding of the
17 term "stale marks" when you received this?

18 A. Stale marks referred to the marks
19 that were done at the beginning of the week
20 associated with the transaction, so it would
21 have been the Monday or Tuesday of that week
22 where the marks were done.

23 Q. And did you discuss with Alvarez
24 after the closing, the issue of whether the
25 marks were stale?

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1 M. Fazio
2 MS. SCHAFFER: Objection to form.

3 A. Yes, I did. I indicated, and I think
4 I've answered many times, that we have asked
5 them to get the updated marks associated with
6 the securities that were transferred.

7 Q. And what did they tell you about
8 their ability to get updated marks from Lehman?

9 A. They did not have the systems. The
10 systems had been transferred to Barclays and
11 Barclays had not given them an updated list of
12 the securities that were transferred and the
13 market values as of the 19th.

14 Q. Were you seeking updated marks as of
15 September 19th?

16 A. Yes, I was.

17 Q. The systems at that time were still
18 under the control of Lehman, correct?

19 MS. TAGGART: Object to form.
20 Foundation.

21 A. I do not know -- when you say under
22 the control, I do not know what you mean under
23 the control of Lehman.

24 Q. Well, Barclays had not completed the
25 acquisition as of September 19th, correct?

1 M. Fazio
2 MS. TAGGART: Object to form and
3 foundation.

4 A. That's correct.

5 Q. Did you ever find out whether Lehman,
6 that is, LBI, had updated its marks from
7 September 12th, 2008, to September 19th, 2008?

8 MS. TAGGART: Object to form and
9 foundation and potentially privileged.

10 You should disclose any information,
11 if any, that you received directly from
12 Lehman or its advisors, but if you have
13 heard any information related to this from
14 counsel, don't answer that.

15 THE WITNESS: So repeat the question.
16 Sorry.

17 (Question was read back as follows:

18 "QUESTION: Did you ever find out
19 whether Lehman, that is, LBI, had updated
20 its marks from September 12th, 2008, to
21 September 19th, 2008?")

22 A. No, I did not find out.

23 MS. TAGGART: I think we'd like a
24 break. It's been about an hour.

25 MR. STERN: All right. You've asked

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<p>1 M. Fazio 2 me to try to complete at a reasonable hour, 3 but if we keep on taking breaks, that's 4 going to be difficult. 5 We can take a break whenever you 6 want. 7 MS. TAGGART: Okay. Thank you. 8 THE VIDEOGRAPHER: The time is 10:49 9 a.m. We're going off the record. 10 (Recess taken.) 11 THE VIDEOGRAPHER: The time is 10:59 12 a.m. We're back on the record, Video No. 2. 13 MS. TAGGART: Mr. Fazio wants to 14 clarify something for the record. 15 THE WITNESS: For the record, I 16 wanted to clarify when we were talking 17 about Exhibit 463B and talking about the 18 third page of that exhibit, that I've seen 19 various schedules prepared. 20 I'm not sure if this is the exact 21 schedule that I have seen. I was not on 22 this email and haven't seen the email, but 23 when we talked about transaction summaries, 24 I had seen some transaction summaries but 25 can't swear that this is the same version</p>	<p>1 M. Fazio 2 that I had seen. 3 BY MR. STERN: 4 Q. Do you recall receiving a summary of 5 the transaction from Alvarez during the week 6 after the closing? 7 A. Not during the week after the 8 closing, no. 9 Q. At what point? 10 A. I would have seen when I've been 11 talking to Alvarez, things that they might have 12 been working on at the time, so I might have 13 seen a draft that looked like this. I can't say 14 if the numbers are exactly the same at this 15 moment, but in October I think I would have seen 16 something that they would have been working on. 17 Q. Do you have any reason to believe 18 that Alvarez would give a summary to FTI and not 19 provide you with a copy of the same summary? 20 MS. TAGGART: Object to form. 21 Foundation. 22 A. FTI does different things than we do, 23 so they probably give them many things 24 associated with the transaction and this whole 25 case that they don't give us.</p>
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<p>1 M. Fazio 2 Q. You recall attending meetings with 3 Alvarez and FTI? 4 A. Right. 5 Q. After the closing, correct? 6 A. Correct. 7 Q. And do you recall one way or the 8 other whether you were given this summary in one 9 of those meetings? 10 A. I do not recall receiving this 11 summary in any meeting. 12 I might have seen drafts of it that 13 they would have had, but I would not have been 14 given a copy of that. 15 Q. You have a specific recollection that 16 you can testify to under oath that you did not 17 receive this summary in one of those early 18 meetings with Alvarez. 19 MS. TAGGART: Objection. Asked and 20 answered and argumentative. 21 BY MR. STERN: 22 Q. Is that your testimony? 23 MS. TAGGART: You know it's improper 24 for him to -- to ask him -- 25 MR. STERN: Please.</p>	<p>1 M. Fazio 2 MS. TAGGART: -- to reaffirm 3 testimony -- 4 MR. STERN: Please. 5 MS. TAGGART: -- that he has already 6 given. 7 MR. STERN: Counsel -- 8 MS. TAGGART: You can answer -- 9 MR. STERN: -- this is not proper 10 under the local rules. 11 MS. TAGGART: -- that question. 12 Asked and answered again. 13 MR. STERN: Counsel, this is not 14 proper under the local rules. You know 15 that. 16 MS. TAGGART: Your question is not 17 proper under the local rules. 18 MR. STERN: There's no reason to get 19 hostile. 20 Can you repeat the question. 21 (Question was read back as follows: 22 "QUESTION: You have a specific 23 recollection that you can testify to under 24 oath that you did not receive this summary 25 in one of those early meetings with</p>

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<p>1 M. Fazio</p> <p>2 Q. So when you testified concerning the</p> <p>3 line "Negotiated Mark Haircut," was that</p> <p>4 testimony accurate?</p> <p>5 MS. TAGGART: Object to form.</p> <p>6 A. I have had discussions with Alvarez</p> <p>7 and have seen documents that they have produced</p> <p>8 for the committee which have used those terms,</p> <p>9 and I have asked various questions of Alvarez</p> <p>10 throughout this case and my understanding about</p> <p>11 that \$5 million is still the same; with respect</p> <p>12 to what they know and the market value of the</p> <p>13 securities that detail the transaction and the</p> <p>14 transaction value of those securities as of the</p> <p>15 19th has not been given to them or us as of this</p> <p>16 date as far as I'm aware.</p> <p>17 Q. So you referred to \$5 million.</p> <p>18 You meant \$5 billion?</p> <p>19 A. \$5 billion, yes.</p> <p>20 Q. In your testimony concerning this</p> <p>21 document and the line that reads "Assets</p> <p>22 transferred under repo stale marks," was that</p> <p>23 testimony accurate?</p> <p>24 MS. TAGGART: Object to form.</p> <p>25 I think you're going to have to be</p>	<p>1 M. Fazio</p> <p>2 more specific about what testimony you want</p> <p>3 him to discuss now.</p> <p>4 MR. STERN: I don't think so.</p> <p>5 BY MR. STERN:</p> <p>6 Q. Was that testimony accurate?</p> <p>7 A. All my testimony --</p> <p>8 MS. TAGGART: Object to form.</p> <p>9 A. -- is accurate, yes.</p> <p>10 And with respect to stale marks, they</p> <p>11 have used that term before, Alvarez & Marsal.</p> <p>12 Q. Okay. Let me show you a document</p> <p>13 that we've previously marked as Exhibit 466.</p> <p>14 I'll ask you to please review that</p> <p>15 and tell me what it is.</p> <p>16 (Document review.)</p> <p>17 A. It's an email from Brad Geer to</p> <p>18 Crayton Bell and myself.</p> <p>19 Q. And what is the attachment to it?</p> <p>20 A. Well, there's a lot of redacted</p> <p>21 things, but the attachment is, it looks like it</p> <p>22 says "Footnote A, securities transferred under</p> <p>23 Barclays repo agreement."</p> <p>24 Q. And do you see on that document</p> <p>25 there's handwritten brackets next to certain of</p>
Page 72	Page 73
<p>1 M. Fazio</p> <p>2 the figures?</p> <p>3 A. Yup.</p> <p>4 Q. Do you know whose notation that is?</p> <p>5 A. No, I do not.</p> <p>6 Q. Aside from that one document that's</p> <p>7 labeled HLHZ 0035874, do you recall whether</p> <p>8 anything else was attached to this email?</p> <p>9 A. I do not recall.</p> <p>10 Q. You recall earlier we referred to an</p> <p>11 email that Mr. Despins sent to Weil, Gotshal</p> <p>12 which referred to a review by Houlihan of</p> <p>13 certain securities.</p> <p>14 Can you tell me who at Houlihan did</p> <p>15 that review, which people?</p> <p>16 MS. TAGGART: You can answer, but</p> <p>17 answer with names only.</p> <p>18 A. Staff persons; Michael Livanos,</p> <p>19 Andrew McNamara, Angela Lorenzano and there's</p> <p>20 probably several others.</p> <p>21 Q. Anyone else?</p> <p>22 A. There's probably several other staff</p> <p>23 people that report to those people that would</p> <p>24 have been working on it.</p> <p>25 Q. And were you involved in that review?</p>	<p>1 M. Fazio</p> <p>2 A. Yes.</p> <p>3 Q. And aside from yourself, were there</p> <p>4 any other senior people involved in that review?</p> <p>5 A. I would have shared results with some</p> <p>6 of my partners.</p> <p>7 Q. Who?</p> <p>8 A. Brad Geer primarily.</p> <p>9 Q. Saul Burian?</p> <p>10 A. Saul might have gotten a copy from</p> <p>11 Brad or somebody. I don't know.</p> <p>12 Q. What was the purpose of that review?</p> <p>13 MS. TAGGART: Objection.</p> <p>14 Objection, and I'm going to instruct</p> <p>15 not to answer on attorney client and work</p> <p>16 product privilege.</p> <p>17 BY MR. STERN:</p> <p>18 Q. Is that a review that Houlihan did in</p> <p>19 anticipation of litigation concerning the sale</p> <p>20 transaction?</p> <p>21 MS. TAGGART: Objection. Calls for</p> <p>22 legal conclusion.</p> <p>23 I'm going to object also not to</p> <p>24 answer on attorney-client and work product</p> <p>25 privileges.</p>

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1 M. Fazio
2 MR. STERN: So you're instructing him
3 not to answer.
4 MS. TAGGART: Yes.
5 BY MR. STERN:
6 Q. Is that a review that Houlihan would
7 have done for the benefit of the committee in
8 any event?
9 MS. TAGGART: You can answer yes, no
10 or I don't know to that.
11 A. We would have attempted to review the
12 security evaluation --
13 MS. TAGGART: No, wait. Stop.
14 THE WITNESS: Go ahead. What's your
15 question?
16 MS. TAGGART: I want you to just
17 answer the question.
18 Read the question again.
19 (Question was read back as follows:
20 "QUESTION: Is that a review that
21 Houlihan would have done for the benefit of
22 the committee in any event?")
23 A. We may have.
24 Q. Let me show you a document that we've
25 previously marked as Exhibit 464B.

1 M. Fazio
2 These are excerpts from a
3 presentation that Alvarez gave on October 8,
4 2008, and my question is do you recall attending
5 a presentation that Alvarez gave to the
6 committee on October 8, 2008?
7 A. I believe I was there, yes.
8 Q. And turning to the fourth page of
9 this document, please, it's the page with the
10 Bates number ending 4447.
11 A. Okay.
12 Q. It's labeled Roman three "Significant
13 Transactions" at the top.
14 Do you see that?
15 A. Yes, I do.
16 Q. Do you recall being present for the
17 part of the presentation in which this slide was
18 reviewed?
19 And you can take a minute to review
20 it.
21 (Document review.)
22 A. Yes.
23 Q. And do you recall what was said by
24 the participants concerning information on this
25 slide when it was presented?

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1 M. Fazio
2 A. To the best of my recollection,
3 Mr. Fogarty would have been giving a summary of
4 the transaction and detailing the information
5 that they had at the time, and would have gone
6 through these numbers with the committee.
7 Q. And do you recall saying anything
8 during this part of the presentation?
9 A. I would have said stuff during this
10 presentation as well as in privileged
11 conversations with counsel and our committee,
12 asking questions about the details and getting
13 details associated with the securities that were
14 actually transferred and their actual marks on
15 the 19th.
16 Q. Do you recall what you actually said?
17 A. I don't remember verbatim what I
18 said.
19 Q. Do you recall generally?
20 A. Generally I would have asked where
21 they stand on getting the detailed schedule of
22 assets associated with the transaction and the
23 marks on the 19th.
24 Q. Do you recall commenting at all on
25 the line that states, "Negotiated a \$5 billion

1 M. Fazio
2 reduction"?
3 A. We would have talked with Fogarty and
4 the estate about this many times; that these
5 were stale marks and the actual marks as
6 represented to us, the actual marks as
7 represented by Mr. Seery and Mr. Klein, the
8 actual marks had declined significantly between
9 the time of the last run and the Friday the
10 19th.
11 Q. My question is a bit more specific
12 than that.
13 Going back in time to this meeting,
14 if you recall, did you say anything at this
15 meeting specifically concerning this line which
16 states, "Negotiated a \$5 billion reduction"?
17 A. I would have commented, like I said,
18 on the entire line and the fact that the stale
19 marks and the securities detail that we did not
20 have associated with the transaction or they
21 didn't have associated with coming up with a
22 detail mark-to-market of all the securities
23 transferred and their market values on the 19th.
24 Q. Do you recall your specific words on
25 that subject at this meeting?

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1 M. Fazio

2 A. No, I do not.

3 Q. Did you take any notes during the
4 meeting?

5 A. I do not believe so.

6 Q. Were you involved in any analysis of
7 the cure liability that Barclays had assumed?

8 MS. TAGGART: You can answer that
9 yes, no or I don't know.

10 A. No.

11 Q. Do you recall attending a meeting in
12 February 2009 at these offices, Boies Schiller,
13 with representatives of Barclays Capital?

14 A. Yes.

15 Q. And do you recall that Mr. King and
16 Mr. Keegan from Barclays and Mr. Larocca from
17 Barclays attended that meeting?

18 A. I believe all three were present.

19 Q. And do you recall there was
20 discussion at that meeting concerning Barclays'
21 replacement of the Fed repo?

22 A. Yes.

23 Q. At that meeting were you and others
24 from Houlihan given an opportunity to ask
25 questions that you had concerning Barclays'

1 M. Fazio

2 replacement of the Fed repo?

3 A. We asked questions that we wanted to
4 ask, yes, we were given the opportunity.

5 Q. Did Barclays refuse to answer any of
6 yours questions?

7 A. I don't know if they refused to
8 answer any question.

9 I know that they -- we had still come
10 out of that meeting requesting significant
11 amounts of information that we did not get, so
12 if you say that we did not get information that
13 we had requested numerous times, then I would
14 say that they didn't answer all the questions.

15 Q. I understand that there was a
16 follow-up request by the committee for
17 documents; is that right?

18 A. That's correct.

19 Q. Putting aside the request for
20 documents, were there any questions that you
21 posed in that meeting that the Barclays people
22 refused to answer?

23 MS. TAGGART: Object to form.
24 Argumentative. Asked and answered.
25 You can answer again.

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1 M. Fazio

2 A. As I said, the main purpose of the
3 meeting is to get information associated with
4 the detailed schedules that we had requested
5 numerous times and have not received, so if you
6 say did they not answer a question by not giving
7 us information, I would contend that they didn't
8 answer all our questions, yes.

9 Q. In the meeting, do you recall a
10 specific question that you or others on behalf
11 of the committee asked that Barclays did not
12 answer?

13 A. We asked for documents and we did not
14 receive them, so I think that's a question, can
15 we get the documents, and since we haven't
16 received them, I guess that's a non-answer.

17 Q. Well, do you recall when the
18 committee made its request for documents?

19 A. I don't have the exact dates, no.
20 I'd have to go back to emails and requests for
21 information.

22 Q. Subsequently Barclays did produce
23 documents to the committee.

24 Do you recall that?

25 MS. TAGGART: Object to form.

1 M. Fazio

2 Foundation.

3 A. They have given some documents to the
4 committee, that's correct.

5 They have not answered all of my
6 questions to give me a detailed listing of every
7 security that was transferred and its market
8 value on the 19th.

9 Q. Have you reviewed Professor
10 Pfleiderer's report in this case?

11 A. I do not believe I have. I'd have to
12 see it, but I don't believe so.

13 Q. Do you recall the volume of material
14 that Barclays produced after that February 2009
15 meeting?

16 MS. TAGGART: Object to form and
17 foundation.

18 And are you including in this
19 litigation?

20 BY MR. STERN:

21 Q. Do you recall how many documents
22 Barclays produced voluntarily to Houlihan after
23 that February 2009 meeting?

24 MS. TAGGART: Object to form.
25 Foundation.

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<p>1 M. Fazio 2 And if you won't say that you're 3 asking something about the litigation, then 4 I have to instruct on privilege and 5 instruct not to answer. 6 Just ask before the litigation and 7 I'll let him answer, but if it gets into 8 what has he seen and talked about, what 9 production we've gotten from Barclays -- 10 MR. STERN: Please, please, Counsel, 11 Counsel, I'm not looking for speeches. 12 BY MR. STERN: 13 Q. After the February 2009 meeting, 14 Houlihan received documents from Barclays, 15 correct? 16 MS. TAGGART: Objection and -- still 17 objecting to form, and unless you're going 18 to limit it before the litigation, I'm 19 going to instruct not to answer on 20 privilege. 21 MR. STERN: You're instructing him 22 not to answer whether Houlihan received 23 documents from Barclays on grounds of 24 privilege? 25 MS. TAGGART: Well, yes, because if</p>	<p>1 M. Fazio 2 you're asking -- 3 MR. STERN: Okay. Fine. Fine. I 4 don't agree with that assertion or many of 5 your other assertions concerning 6 privilege but -- 7 MS. TAGGART: Are you just asking 8 whether you Barclays have given -- 9 MR. STERN: -- we can take that up 10 separately. 11 MS. TAGGART: -- him Houlihan 12 documents? 13 MR. STERN: Please. This is not a 14 time for us to have a colloquy. 15 BY MR. STERN: 16 Q. After that February 2009 meeting and 17 after Barclays produced documents to the 18 committee, what did the committee do to raise 19 any follow-up questions with Barclays? 20 MS. TAGGART: Objection. 21 And I'm going to instruct not to 22 answer if you -- 23 MR. STERN: Did -- 24 MS. TAGGART: -- to the extent -- 25 hold on -- to the extent that you have</p>
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<p>1 M. Fazio 2 information from communication with 3 counsel. Well, then I'm going to instruct 4 not to answer. 5 BY MR. STERN: 6 Q. To your knowledge, did you or anyone 7 else acting on behalf of the committee raise any 8 follow-up questions with Barclays after that 9 February 2009 meeting? 10 MS. TAGGART: You can answer that yes 11 or no. 12 A. We have had communications through 13 the lawyers on follow-up items on a continuous 14 basis, yes. 15 Q. And what were those questions? 16 MS. TAGGART: Object to form. 17 A. We have a -- 18 MS. TAGGART: Wait. 19 THE WITNESS: Go ahead. 20 MS. TAGGART: You mean the questions 21 that he asked the counsel or that he thinks 22 was asked of Barclays? 23 MR. STERN: Let me ask a question. 24 BY MR. STERN: 25 Q. What questions did the committee</p>	<p>1 M. Fazio 2 raise with Barclays after the February 2009 3 meeting? 4 MS. TAGGART: Object to form. 5 Foundation. 6 But to the extent you know what the 7 committee asked, you can answer. 8 A. There was a memo written from counsel 9 requesting additional information associated 10 with this transaction. 11 Q. That was a request for additional 12 documents, correct? 13 A. That's correct. 14 Q. Aside from that, did you or anybody 15 else acting on behalf of the committee request a 16 follow-up meeting with representatives of 17 Barclays concerning any questions that you had? 18 MS. TAGGART: I'm going to object to 19 form, foundation and privilege. 20 You can respond whether you -- 21 A. I have not had direct conversations 22 with Barclay personnel. 23 I know our counsel has had many 24 conversations with Barclays' counsel. 25 Q. Do you know if your counsel or</p>

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1 M. Fazio
2 anybody from Houlihan has requested, ever
3 requested, a further meeting with Barclays after
4 that February 2009 meeting?

5 MS. TAGGART: I'm going to object to
6 form, foundation and privilege except to
7 the extent you should answer -- hold on,
8 you should answer whether you did any
9 such --

10 A. I had no direct conversations with
11 Barclay personnel for a request of a meeting
12 with them, me and a Barclay personnel.

13 Q. Okay. So, in other words, you met
14 with Barclays in February 2009 and you did not
15 request any follow-up meeting with Barclays; is
16 that right?

17 MS. TAGGART: Objection. Asked and
18 answered. Form, foundation.

19 You should respond to what you
20 personally did if that's correct.

21 A. And I responded numerous times to
22 you, but I'll respond again.

23 I did not have any conversations with
24 Barclay personnel for a follow-up meeting.

25 Q. If you had open questions, why didn't

1 M. Fazio
2 you press for a follow-up meeting with Barclays?
3 MS. TAGGART: Object to form.
4 Foundation.

5 You can answer, but don't reveal any
6 communications that you had with counsel.

7 A. Most of my conversations were with
8 counsel with regard to this matter and I had no
9 direct conversations with Barclay, and as such,
10 I guess it's all privileged.

11 Q. Sir, you remember attending a
12 face-to-face meeting with representatives of
13 Barclays in February 2009, correct?

14 A. That's correct.

15 Q. And do you recall that the Barclays
16 representatives indicated their willingness to
17 address the committee's questions?

18 A. They had answered most of our
19 questions other than the information that we
20 requested on the detailed schedules that was
21 subject matter of the follow-up letters that
22 were sent to Barclays and yourselves.

23 Q. And after documents were produced,
24 nobody acting on behalf of the committee, to
25 your knowledge, requested a follow-up meeting

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1 M. Fazio
2 with Barclays representatives; is that correct?

3 MS. TAGGART: Object to form,
4 foundation and privilege.

5 If you have any information that's
6 separate from your communications with
7 counsel, then you can talk about that.

8 A. All of my conversations were with
9 counsel.

10 Q. Putting aside your communications
11 with counsel, do you have any knowledge of any
12 request for a follow-up meeting with Barclays
13 any time after that February 2009 meeting?

14 MS. TAGGART: First, for the record,
15 I object to Mr. Stern laughing as he's
16 asking that question.

17 MR. STERN: I'm not laughing.

18 MS. TAGGART: I'm objecting to form.

19 MR. STERN: I'm not laughing. I'm
20 asking a question.

21 BY MR. STERN:

22 Q. Aside from your communications with
23 counsel, do you have any recollection of the
24 committee requesting a follow-up meeting with
25 Barclays?

1 M. Fazio

2 MS. TAGGART: Okay. You can answer
3 if you have knowledge outside of
4 communications with counsel.

5 A. I have no knowledge outside of
6 discussions with counsel.

7 Q. Based on the written material that
8 you received from Barclays, did you have any
9 follow-up questions to raise with Barclays?

10 MS. TAGGART: Object to form.

11 You can answer yes or no to that.

12 A. We have many follow-up questions and
13 information requests from Barclays.

14 Q. Did you ever suggest that there
15 should be a follow-up, face-to-face meeting with
16 Barclays in order to address those questions?

17 MS. TAGGART: Objection. Form,
18 foundation and I'm going to instruct not to
19 privilege -- no to answer on the scope of
20 privilege if this was communication with
21 the you and your counsel.

22 If you disclosed that to someone
23 other than Houlihan and your counsel, you
24 can answer.

25 A. All my discussions were with counsel

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<p>1 M. Fazio 2 on this matter. 3 Q. Well, then let me just ask about your 4 point of view. 5 Would you have found it helpful, 6 given your review of the documents that Barclays 7 provided, to have a face-to-face meeting once 8 again with Mr. King, for example, with 9 Mr. Keegan, for example? 10 MS. TAGGART: Object to form. 11 To the extent you understand, you can 12 answer. 13 A. I think that there's many things that 14 we have requested from Barclays, and to ask them 15 to give us that information and to have that 16 information would be very helpful, yes. 17 Q. So in your view, it would have been 18 helpful to have had a follow-up meeting with 19 Mr. King and Mr. Keegan. 20 A. I did not -- 21 MS. TAGGART: Object to form. 22 A. -- say that. 23 Q. Well, that was my question though. 24 A. I understand that, but I -- 25 Q. Can you answer my question?</p>	<p>1 M. Fazio 2 The question is -- 3 MS. TAGGART: Okay. Now you're 4 interrupting him. 5 MR. STERN: Let me just ask a 6 question. 7 BY MR. STERN: 8 Q. The question is -- 9 MS. TAGGART: You have to wait till 10 he finishes his answer before you ask the 11 next question. 12 Do you have anything more to say? 13 THE WITNESS: No. 14 A. Go to the next question. 15 Q. The question is, would you have found 16 it helpful at the time after receiving 17 spreadsheets and other materials from Barclays 18 to have had a follow-up, face-to-face meeting 19 with Mr. King and Mr. Keegan for example? 20 MS. TAGGART: Object to form. Asked 21 and answered. 22 A. I believe we have had many 23 communications with my lawyers on what we 24 believe is best. It's clearly more information 25 we can get from Barclays is always better</p>
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<p>1 M. Fazio 2 associated with this transaction. 3 Q. Do you know of any reason, do you 4 know of any reason why the committee did not 5 request a follow-up meeting with the Barclays 6 representatives? 7 MS. TAGGART: I'm going to object to 8 form and instruct not to answer on 9 attorney-client and work product privilege. 10 BY MR. STERN: 11 Q. Did it concern you personally that at 12 no time after that February 2009 meeting did the 13 committee request a follow-up meeting with 14 Barclays representatives? Did that concern you? 15 MS. TAGGART: Objection to form and 16 I'm going to instruct not to answer on 17 privilege. 18 BY MR. STERN: 19 Q. Do you recall that when Barclays 20 initially produced documents to the committee, 21 those documents were produced in a TIFF format? 22 A. I don't recall what format they were 23 received in. 24 Q. Do you recall subsequently they were 25 produced in a native format?</p>	<p>1 M. Fazio 2 A. I don't recall what formats they were 3 received in. 4 MR. STERN: We'll mark this as the 5 next exhibit. 6 (Deposition Exhibit 619A, Email dated 7 9/22/08 from O'Donnell to various 8 individuals with attachment, Bates stamped 9 HLHZ0009061, marked for identification, as 10 of this date.) 11 BY MR. STERN: 12 Q. Looking at Exhibit 619A, can you tell 13 me what it is? 14 A. It's a memo from Dennis O'Donnell to 15 various people, I won't read everybody off, but 16 setting forth in connection with the committee 17 call at 1:00 p.m., an email from Houlihan Lokey 18 summarizing the current state of the 19 LBI/Barclays transaction. 20 Q. Did you have any role in drafting the 21 email from Houlihan Lokey summarizing the 22 current state of the LBI/Barclays transaction? 23 A. I would have reviewed it. 24 Q. Do you know who drafted it? 25 A. I don't recall who the principal</p>

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<p>1 M. Fazio 2 author was, no. 3 Q. Was that email prepared by Houlihan 4 in order to communicate certain facts to the 5 Creditors Committee? 6 MS. TAGGART: Object to form. 7 A. It would have been written to 8 summarize the current state of the transaction 9 as we knew it as of that time. 10 Q. And was that email prepared in order 11 to provide information that the committee would 12 need in order to make a decision concerning the 13 transaction? 14 MS. TAGGART: I'm going to instruct 15 not to answer on privilege and object to 16 form. 17 BY MS. TAGGART: 18 Q. Do you know whether that email was 19 prepared by Houlihan Lokey in anticipation of 20 litigation concerning the LBI/Barclays 21 transaction? 22 MS. TAGGART: I'm going to object and 23 instruct not to answer on privilege. 24 BY MR. STERN: 25 Q. Do you know whether that email from</p>	<p>1 M. Fazio 2 Houlihan Lokey would have been sent to the 3 committee and whether the committee would have 4 needed that information in any event, whether or 5 not it was prepared in anticipation of 6 litigation? 7 MS. TAGGART: Object to form, 8 foundation and I'm going to instruct not to 9 answer on privilege. 10 BY MR. STERN: 11 Q. Regardless of whether there was any 12 anticipation of litigation at the time, did the 13 Houlihan Lokey email contain information that 14 the committee needed at the time in order to 15 make certain decisions? 16 MS. TAGGART: Object to form, 17 foundation and instruct you not to answer 18 on privilege. 19 MR. STERN: Let's mark this as the 20 next exhibit. 21 (Deposition Exhibit 620A, Email chain 22 beginning with email dated 9/21/08 from 23 O'Donnell to Bell, Bates stamped 24 MTHM00007214 through 7218, marked for 25 identification, as of this date.)</p>
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<p>1 M. Fazio 2 BY MR. STERN: 3 Q. This appears to be a series of emails 4 referring to a "Summary of the LBI Sale 5 Hearing." 6 Do you see that? 7 A. That's the title of this, yes. 8 Q. Looking at the second page of this 9 exhibit, does this refresh your recollection 10 that you received a copy of that Summary of the 11 LBI Sale Hearing at the time of this email? 12 (Document review.) 13 Q. Do you see that you're copied as a 14 cc? 15 A. I did not see my name yet, sorry. 16 Q. It's a long list. 17 (Document review.) 18 A. I see my name there, yes, finally. 19 Q. Now do you recall whether the Summary 20 of the LBI Sale Hearing was sent to the 21 committee in order to communicate certain facts 22 to the committee concerning the sale hearing? 23 MS. TAGGART: Object to form, 24 foundation. 25 I'm going to instruct not to answer</p>	<p>1 M. Fazio 2 on privilege. 3 And also note that this is a summary 4 from Milbank. 5 BY MR. STERN: 6 Q. Same question. 7 MS. TAGGART: Same objections and 8 instruction. 9 BY MR. STERN: 10 Q. Regardless of the author, do you know 11 whether this Summary of the LBI Sale Hearing was 12 intended to communicate certain facts to the 13 committee concerning the sale hearing? 14 MS. TAGGART: So same objections and 15 instructions. Don't answer. 16 BY MR. STERN: 17 Q. Do you know whether this summary was 18 prepared in anticipation of litigation 19 concerning the sale transaction? 20 MS. TAGGART: Same objections and 21 instruction. 22 BY MR. STERN: 23 Q. Do you know whether this is a summary 24 that the committee would have needed in any 25 event, without regard to whether there might be</p>

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<p>1 M. Fazio 2 anticipated litigation, in order to make certain 3 decisions concerning the transaction? 4 MS. TAGGART: Same objections and 5 instruction. 6 BY MR. STERN: 7 Q. I'll give you a document that we 8 previously marked as Exhibit 476B, and I'll just 9 point out that in the cc line there's a lengthy 10 list of recipients and you are included as one. 11 Can you tell me what this document 12 is? 13 A. There's a bunch of information that's 14 been redacted, but the attachment is entitled 15 "Transcript Barclays/Lehman Agreement 16 Announcement September 17th, 2008." 17 Q. Now with respect to the information 18 that was redacted, do you know whether that 19 information consisted of a summary of the 20 transcript that was attached? 21 MS. TAGGART: You can answer yes or 22 no or I don't know to that. 23 A. I do not know. 24 Q. Do you know whether the information 25 that was redacted included facts that the</p>	<p>1 M. Fazio 2 committee needed to know? 3 MS. TAGGART: You can answer yes or 4 no or I don't know. 5 A. I don't know. 6 Q. Do you know whether the information 7 that was redacted was information that was 8 prepared in anticipation of litigation relating 9 to the sale transaction? 10 MS. TAGGART: I'm going to object to 11 form, foundation and instruct not to answer 12 on privilege. 13 BY MR. STERN: 14 Q. Do you know whether the information 15 that's redacted is information that the 16 committee would have needed in any event, 17 without regard to any anticipated litigation? 18 MS. TAGGART: I'm -- same objections 19 and instruction. 20 BY MR. STERN: 21 Q. Do you know whether the information 22 that was redacted was information that the 23 committee needed in order to make certain 24 decisions in connection with the sale 25 transaction?</p>
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<p>1 M. Fazio 2 MS. TAGGART: Same objection and 3 instruction. 4 MR. STERN: Let's mark this as the 5 next exhibit. 6 (Deposition Exhibit 621 A, Email 7 chain beginning with email dated 9/20/08 8 from Fazio to O'Donnell with attachment, 9 Bates stamped HLHZ0027996 through 998, 10 marked for identification, as of this 11 date.) 12 BY MR. STERN: 13 Q. I'll ask you to please review 621A 14 and tell us what it is. 15 (Document review.) 16 A. It's an email from myself to Dennis 17 O'Donnell, Craig Bell and Brad Geer. The 18 subject matter is Lehman/Barclays. 19 Q. Now in the bottom email on the first 20 page Mr. Bell writes, "Here is the draft 21 Clarification Letter. This represents Weil's 22 view of the deal and Barclays is reviewing 23 Dennis O'Donnell. Can you please send to the 24 Houlihan team." 25 And then above you write an email to</p>	<p>1 M. Fazio 2 Mr. O'Donnell, Mr. Bell and Mr. Geer. 3 In your communication which is 4 redacted here, were you commenting on the draft 5 Clarification Letter? 6 MS. TAGGART: I'm going to object and 7 instruct not to answer on privilege. 8 BY MR. STERN: 9 Q. In your communication, were you 10 suggesting changes to the Clarification Letter? 11 MS. TAGGART: Same objection and 12 instruction. 13 BY MR. STERN: 14 Q. Do you know whether before you wrote 15 your email you reviewed the draft that had been 16 provided to you? 17 MS. TAGGART: You can answer. 18 A. I do not know. 19 Q. Now before the September 19th Sale 20 Hearing, did you participate in any discussions 21 with Mr. Seery, James Seery, concerning the 22 anticipated transaction? 23 A. I believe I was party to a conference 24 call with him. 25 Q. In that conference call, do you</p>

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1 M. Fazio
2 recall whether Mr. Seery described to Houlihan
3 how the exchange-traded derivatives business
4 would be treated in the anticipated transaction?
5 A. I do not recall specifically how he
6 indicated it would be treated.
7 Q. Do you recall generally?
8 A. I do not recall generally what he
9 would have said in that meeting with regard to
10 the exchange-traded derivatives.
11 Q. So you have no recollection
12 concerning what Mr. Seery told you concerning
13 how the exchange-traded derivatives business was
14 going to be treated in the anticipated
15 transaction.
16 A. We talked about the transaction in
17 general and what was going and what was staying,
18 and it was represented that all the people,
19 which would include people associated with
20 exchange-traded derivatives, were going with the
21 transaction.
22 Q. Do you recall anything that Mr. Seery
23 told you before the Sale Hearing concerning the
24 transfer of the exchange-traded derivatives
25 business to Barclays aside from the people who

1 M. Fazio
2 worked in the business?
3 A. No. I do not remember specifically,
4 no.
5 MR. STERN: I have no further
6 questions.
7 THE VIDEOGRAPHER: The time is 11:45
8 a.m. We're going off the record.
9 (Time noted: 11:45 a.m.)
10
11
12
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20
21
22
23
24
25

MICHAEL A. FAZIO

Subscribed and sworn to before me
this day of 2010.

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Page 105

1
2 CERTIFICATE
3
4 STATE OF NEW YORK)
5) ss.:
6 COUNTY OF QUEENS)
7
8 I, ANNETTE ARLEQUIN, a Notary Public
9 within and for the State of New York, do
10 hereby certify:
11 That MICHAEL A. FAZIO, the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such
14 deposition is a true record of the
15 testimony given by such witness.
16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage; and that I am
19 in no way interested in the outcome of this
20 matter.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 12th day of February, 2010.
23
24
25 ANNETTE ARLEQUIN, CCR, RPR

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6 MICHAEL A. FAZIO
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25

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF ERIC JONATHAN FELDER

14 New York, New York

15 July 31, 2009

16
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24018
20
21
22
23
24
25

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2 transcript as highly confidential, and
3 within a week, we will dedesignate as
4 appropriate under the order.

5 EXAMINATION BY
6 MR. CARDEN:

7 Q. Good morning, Mr. Felder.

8 A. Good morning.

9 Q. You are currently employed by
10 Barclays, correct?

11 A. Correct.

12 Q. What is your current position, sir?

13 A. I'm the head of global credit trading.

14 Q. And how long have you held that
15 position?

16 A. Since September '08.

17 Q. And as head of global trading, just
18 generally speaking, what are your
19 responsibilities?

20 A. Responsible for secondary trading of
21 cash corporate bonds, credit default swaps, loans,
22 and the municipal securities business rolls into
23 credit.

24 Q. Prior to being employed by Barclays,
25 you were cohead of fixed income at Lehman

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2 Brothers, correct?

3 A. Correct.

4 Q. Starting on September 9 or thereabouts
5 of 2008?

6 A. I believe it was September 8.

7 Q. I am sorry, I meant that -- that's
8 exactly what I meant to say actually.

9 Prior to that, what was your -- what
10 was your previous title and job?

11 A. I was global head of global credit
12 products, since June of '08.

13 Q. And in that position, what were your
14 responsibilities?

15 A. The businesses that rolled up into
16 global credit products were high-grade, high-yield
17 CDOs, municipals, and the credit portion of
18 emerging markets, the corporate credit portion of
19 emerging markets.

20 Q. In connection with your
21 responsibilities as global head of credit
22 products, did you have any responsibilities of any
23 kind with regard to repos?

24 A. No.

25 Q. And when you took over as head of

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2 fixed income on September 8, 2008, what were your
3 responsibilities?

4 A. They were never specifically told to
5 me.

6 Q. Did you have an understanding as to
7 what they were to be?

8 A. We had -- I had a brief conversation
9 with Mike Gelband, with Hyung Lee, who is my
10 cohead, about how the portfolio would be split up
11 between the two of us in a normal business
12 environment, and I was going to be responsible
13 for -- or focus on the credit portion and the
14 mortgage portion, and then Hyung would focus on FX
15 and commodities and more focus outside of the U.S.
16 with my focus in the U.S., because he came from
17 Asia.

18 Q. I would like you to tell me what you
19 consider to have been in the fixed income area at
20 Lehman Brothers as of the time that you had that
21 conversation.

22 A. In fixed income, you would have had
23 rates, commodities, foreign exchange, credit,
24 mortgages, emerging markets, and financing would
25 have been part of fixed income, or it might have

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2 been a JV with equity. I don't know exactly how
3 it was set up because you obviously finance more
4 than just fixed-income product. And commercial
5 real estate.

6 Q. I'm just going to read you a list of
7 asset classes and if you tell me whether you
8 consider them to have been in the fixed income
9 area at Lehman as of September 2008. All right?
10 And I'm just reading now what legends I have been
11 given, so these might not be completely fulsome.

12 CDs and other money market
13 instruments?

14 A. Yes.

15 Q. Total -- corporate obligations and
16 spot?

17 A. I don't know what that means.

18 Q. OK. Corporate stocks and options?

19 A. No.

20 Q. Derivatives and other -- and it is cut
21 off so I can't -- it would have been some
22 derivative products.

23 A. There would have been some, yeah.

24 Q. Some. OK.

25 Governments and agencies would have

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1
2 been a fixed income, correct?

3 A. Correct.

4 Q. Mortgages and -- any mortgage-backed
5 securities would have been as well, correct?

6 A. Correct.

7 Q. Now, when you had the conversation
8 concerning how to divide the fixed income
9 portfolio, was it -- it was divided along product
10 lines or asset classes as well as geography?

11 A. That was the initial intention. It
12 was -- nothing was ever put into --

13 Q. It never functioned?

14 A. Because, you know, that week was
15 the -- when the firm ultimately went under.

16 Q. Let's talk about that week. We are
17 now talking about the week of -- I brought a
18 calendar so we have a, as I said before, a prop.
19 Why don't you avail yourself of it as you wish. I
20 don't see any need to mark it. The dates are what
21 they are from time immemorial to the end of time.

22 You were made the head of fixed income
23 on Monday, the 8th of September, correct?

24 A. Correct.

25 Q. At some time that week there began to

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1
2 be discussions concerning the sale of the entire
3 firm?

4 A. Correct.

5 Q. Were you involved in any of those
6 conversations?

7 A. I was involved in, if people needed
8 information, I was there to help gather
9 information that would have been needed.

10 Q. OK. Let's talk -- is there any other
11 way in which you were -- strike that.

12 I take it you weren't negotiating for
13 the firm in any respect?

14 A. I was not negotiating.

15 Q. You were providing a support, support
16 for those who needed information in connection
17 with the negotiations that were ongoing at the
18 time with Bank of America and perhaps others,
19 correct?

20 A. Correct.

21 Q. Was there anyone in particular that
22 was asking you for information during that week?

23 A. There would be a number of people that
24 would say go get a particular person and send them
25 to a room or tell -- relay instructions throughout

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1
2 that -- really from Friday on.

3 Q. Are we talking about Friday the 12th?

4 A. Correct.

5 Q. So your first conversations concerning
6 any transaction in which the firm was to be sold
7 to B of A or anyone else began on that Friday?

8 A. I never had a conversation about a
9 transaction. It was -- I was told to go to a
10 legal office and help in providing and gathering
11 any information that would have been needed for a
12 due diligence.

13 Q. What kind of information were you
14 asked to get?

15 A. In most cases, it was to get a product
16 expert around a specific asset class that either
17 Barclays or Bank America wanted to discuss. Or
18 specifically, within -- within credit, where that
19 business had rolled up in to me, if I had any risk
20 reports or specific information that was asked.

21 Q. Were you asked to provide any
22 valuations or assist in the obtaining of
23 valuations of any asset classes?

24 A. No.

25 Q. Were any of the people with whom you

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1
2 worked to your knowledge asked to provide
3 valuations on any asset classes?

4 A. I would be assuming.

5 Q. Let's go back to who asked you to help
6 on that Friday. Can you give me any names of
7 people who were involved?

8 A. Mike Gelband.

9 Q. What was Mike's position at the time?

10 A. He was global head of all of debt and
11 equity. So all -- excuse me, all of fixed income
12 and equity.

13 Q. Did you report to him?

14 A. I reported to Mike.

15 Q. Anyone else, anyone other than Mike
16 ask you to provide any information on that Friday,
17 the 12th?

18 A. I believe Ian Lowitt, who was the CFO,
19 and not specifically information but Bart McDade
20 would tell people where to go and be ready for
21 any, you know, any questions or requests. And I'm
22 sorry, also Alex Kirk.

23 Q. I was going to ask you about Alex.
24 What was Alex's position at that time?

25 A. I don't know the exact definition of

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it, but he was brought back by Bart and he was on the executive committee, and I believe his title at that time was head of principal investing.

He -- but he had been the prior co-COO of fixed income, and so it -- he had a -- he had an institutional knowledge of a broad array of the asset classes within fixed income.

Q. And you said that Bart brought him back. Did he bring him back from outside the firm?

A. He had left the firm in early '08.

Q. When did Bart bring him back?

A. I believe it was June. At the same time he brought Mike Gelband back. They came back together.

Q. Do you have any recollection as to any specific information that either Mike or Ian, Bart, Alex asked you to provide? I'm talking about documentary information as opposed to simply going to some room at some point.

A. It was generally around position -- it was around the business heads bringing position sheets or risk reports.

Q. So at some time on the 12th, do you
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have a recollection of having been asked to provide the position sheets for some particular area in the fixed income department?

A. On Friday, I don't remember the law firm, but I was with the Bank America people and they asked to look at credit positions. They didn't seem focused on any of the investment grade securities. They wanted to look at the leveraged loans.

So I had Jim Seery, who ran leveraged loans, come to the law offices and then proceed with those conversations.

Q. Do you have a recollection of having provided any printouts of positions in the fixed income area to B of A? Not personally but I mean in connection with the work you were doing on behalf of the firm?

A. There were definitely risk reports in these meetings. I don't know if they were turned over to Bank America or reviewed there and then kept.

Q. What are you calling a risk report? Are they position reports, the positions that the firm had, long and short positions?

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A. It depends on the asset class, how the risk reports are, are set up. I'm only knowledgeable really about the credit-specific risk reports. But they generally give a broad overview and will list top positions as opposed to a very detailed line-by-line summary of the business.

Q. When you say top positions, are you talking about, say, the top 100 positions that the firm is maintaining? Or how are you characterizing that?

A. Within a business -- the individual risk manager would set it up however they reviewed the risk themselves. So it might be the top 20 longs and the top 20 shorts, or it might be the top jump to default positions or the top current positions, depending on how you would look at the risk. There would be different buckets.

Q. How are the valuations on the positions in such reports established by the firm or how were they established?

A. Traders mark their positions each day.

Q. You didn't have any responsibility for valuations, I take it?

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A. The traders within the business that I run had to mark their positions.

Q. But you didn't do it personally?

A. I did not mark positions.

Q. But you were overseeing those who were marking positions to establish valuations for the positions in the area where you had responsibility, correct?

A. I was overseeing desk heads who were overseeing the traders who were marking.

Q. Now, I have seen a phrase used about a dirty valuation. What's a dirty valuation? Does that phrase mean anything to you?

A. Dirty price means something to me, not dirty valuation.

Q. OK, dirty price?

A. That would be a security without accrued interest.

Q. Did you ever have occasion during the time that Lehman was speaking to B of A to look at any of the valuations for the positions within your area of responsibility?

MR. CERESNY: To clarify, when you say valuations, you mean marks?

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THE WITNESS: Yes.

(Record read)

A. I saw -- I could see the marks on positions within credit.

Q. When you say the positions within credit, would you amplify upon that for me? What do you mean by that?

A. Cash corporate bonds, credit default swaps.

Q. Treasuries?

A. Treasuries are in -- would be used as a hedge within the credit space, and any marks on Treasuries would be automatically fed from the Treasury group that marked them.

Q. But at Lehman, Treasuries were not within fixed income?

A. They were within fixed income.

Q. In the credit area of fixed income?

A. Correct. They were in the interest rate business.

Q. You said you were having a meeting or had a meeting with B of A on the Friday. Was this -- let's talk a little bit about your meetings with B of A. Did you have more than one?

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A. I was there throughout the day. And there were -- there were different meetings throughout the day.

Q. What was your role in those meetings?

A. I was gathering information for, as I mentioned earlier, for example, when they wanted to talk about leveraged loans, I would go get Jim Seery. I gave a brief overview of our credit business.

And then away from that, I was really facilitating getting the right people to the location in order to have -- for them to have the more detailed conversations by asset class.

Q. And did your meetings with B of A continue through the weekend or was it only on the Friday?

A. It was just Friday.

Q. Did you have any meetings of any kind with regard to the sale of the firm on the weekend of the 13th and 14th of September?

A. I had similar -- I went to a different law firm on Saturday where the Barclays team was and had a similar function, where I was there to try to facilitate anything that people would --

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information people would have needed.

Q. Do you recall with whom at Barclays you were meeting?

A. It was Jerry Del Missier, Eric Bommensath, and I believe Mike Keegan.

Q. Did you have meetings with any B of A people on Sunday? Pardon me, I apologize. Did you have any meetings with any Barclays people on Sunday?

A. I don't believe so.

Q. So your meeting with Del Missier, Bommen -- how do you say his name?

A. Bommensath.

Q. And Keegan on Saturday, at a law firm?

A. Yes.

Q. Did you or someone underneath your area of responsibility provide any position lists of any kind to the Barclays people?

A. I would assume so.

Q. But you don't recall?

A. They -- there were risk reports again that were -- that were at the meetings.

Q. OK, let's -- I want to get to the week of the 15th, and before we step off on Monday

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morning, did you have any other meetings of any kind with anybody at Lehman or Barclays or B of A on that weekend in a -- that you haven't spoken about just generally now?

A. Just at the law firm on Friday and Saturday.

Q. Let's start Monday morning. You arrive at the office on Monday morning, and tell me -- you know, I want to get -- I am going to let you do something I don't like to do. I would like a narrative of what you ended up doing that week, so it will maybe short focus our questions and maybe shorten this up a little bit.

Why don't you tell me what happened Monday morning when you got into the office, and we will start off.

A. It was -- I got to -- I got to the office Monday morning. I believe I went to Mike Gelband to ask for instructions as to what I was supposed to be doing, what I was supposed to be directing people to be doing, given the firm had filed for bankruptcy. I was trying to keep people calm and be supportive, you know, and obviously in a tough time.

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Q. And did you ever direct anyone with regard to any of the asset classes that you mentioned to any room other than the room you have just described on the Monday?

A. On the Monday? I don't know if they ended up in other rooms. I would say, come up to the 32nd floor, and then there were just so many people going around that it's possible that someone ended up in a different room than that room.

Q. I understand. I am asking if you recall having directed anybody else to a different room that day.

A. No, I don't.

Q. How long were you at the firm on that Monday, the 15th?

A. I was there until I believe, I believe 5 or 6 o'clock. It might have been a little bit later. Everyone was -- there were still a lot of people there, and the requests for me to do things had stopped, so I was just sort of waiting up there. So I went -- so I left.

Q. You went home?

A. I might have gone and grabbed a drink
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and then gone home.

Q. I understand. But did you come back to the office that day?

A. No.

Q. The next time you came to the office was when?

A. Was Tuesday.

Q. First thing in the morning?

A. I believe Tuesday was the day that I met with Jerry Del Missier and Bob Diamond about my role specifically, and I don't recall if I went directly to the Barclays building at 200 Park or to the old Lehman -- I don't recall which I went to first.

Q. When you say your role, you are talking about your role to be at Barclays, if Barclays purchased --

A. If there was -- yes.

Q. If there was a transaction?

A. Correct.

Q. Let's hold on that for just a moment. That was on the Tuesday, you believe?

A. I believe it was on the Tuesday.

Q. So it would have been Tuesday, the

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16th, correct?

A. Correct.

Q. Did you have any conversations with anybody at Lehman Brothers or Barclays the evening of Monday on the telephone?

A. Bart called me and told me that Bob and Jerry would be reaching out to me over the next day to set up a meeting and I should be expecting that.

Q. Were there any other calls from anyone at Lehman Brothers or Barclays on the evening of Monday, September 15?

A. I believe I spoke to Tom Humphrey.

Q. You called Tom or he called you?

A. I don't recall.

Q. Now, Tom Humphrey was one of the people who worked underneath you in the fixed income area, correct?

A. No. He was the global head of fixed income sales.

Q. That was not within your area of responsibility as cohead of global -- pardon me, of global fixed income?

A. That wasn't -- at different points,

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the global head of fixed income sales either reported to the head of fixed income or didn't. Sometimes it was separate up into Steve Lessing, who ran all distribution.

So I had never -- I wasn't -- I had never been told specifically whether Tom reported to me or not.

Q. All right, fine.

Did -- I am sorry, maybe you said this. Did you call Tom or did he call you?

A. I don't recall.

Q. Do you remember what you spoke to Tom about?

A. I asked him how is it going -- he was still there.

Q. Still at the firm?

A. Still physically at 745 Seventh. So I was trying throughout the night -- I don't think I went to sleep. I was trying to find out are things -- how are things going. And he -- I remember he gave me an update, and he said it seems like things were going OK.

Q. You were checking in with him to check the status of what was happening?

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A. Yes.

Q. When you left the office on Monday, was it your understanding that Barclays was going to purchase the broker dealer or was going to purchase certain assets of Lehman Brothers?

A. All I --

MR. STERN: Objection to the form.

Q. Go ahead.

A. What does that mean?

MR. STERN: It means --

Q. It means I didn't ask a particularly good question on this particular question, but it is good enough for the present purposes.

MR. STERN: Let's hear the question again.

(Record read).

MR. CARDEN: I would say Lehman Brothers, the assets -- pardon me, the broker dealer is not an asset of Lehman Brothers, so I think the question is fine, but I will rephrase it if you really want me to.

MR. STERN: Yeah.

Q. When you left on Monday, was it your

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understanding that the negotiations were still to purchase the entire broker dealer or purchase some specific positions or other assets of Lehman Brothers?

A. I didn't have specific knowledge.

Q. Did you have any general knowledge at all? Had you heard anything?

A. All I had heard during the day was that there was the possibility that Barclays could buy the broker dealer.

Q. When you left on Monday, so far as you knew, that was the conversation that was taking place, it was the purchase of the broker dealer?

MR. STERN: Objection to the form.

A. I didn't have any new -- I didn't have any new specifics of the details.

Q. OK. Now, on Tuesday, did there come a time when you understood that Barclays was considering purchasing something less than the entire broker dealer of Lehman Brothers?

A. No.

Q. Did there ever come a time during the week of September 15 when you understood that Barclays was going to be purchasing certain

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specific assets, meaning positions, asset classes and the like of Lehman Brothers?

A. I had always heard it was the broker dealer.

Q. When did you first learn that it wasn't the broker dealer that Barclays had purchased?

A. I actually thought they did purchase the broker dealer.

Q. To this day?

A. Yes.

Q. OK.

A. Is that not --

MR. STERN: There is a distinction between the assets of the broker dealer and the stock of LBI, so --

MR. CARDEN: OK.

MR. STERN: That's I think where the confusion lies. There really shouldn't be any confusion. Not that you shouldn't be confused, but rather there shouldn't be any confusion on the record because the agreement is a matter of public record.

Q. Let's go to Tuesday when you're

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having your conversation with Mr. Diamond and Mr. Del Missier, right? That was at Barclays?

A. Correct.

Q. Was anyone else present other than the three of you?

A. I believe Michael Evans was there.

Q. Who is Michael Evans?

A. He runs human resources for Barclays.

But I'm not positive.

Q. Do you recall whether that was the morning of the 16th?

A. I believe it was the morning.

Q. You can't recall whether you went straight there or whether you went to the office of Lehman Brothers first?

A. Correct.

Q. How long did you meet with Mr. Diamond and Mr. Del Missier?

A. It was probably about 45 minutes.

Q. Do you know if anyone else at Lehman Brothers was meeting with them as well?

A. I don't.

Q. Did you see any Lehman Brothers people waiting to meet with them?

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A. No. But I do know that other Lehman people met with them the night before.

Q. Do you know who met with them the night before?

A. I believe Tom Humphrey sent me, I believe, an e-mail saying that he had met with them. But away from that, I didn't know anyone specifically.

Q. Did you ever learn that other people at Lehman Brothers had met with Mr. Diamond at some point on the Monday or the Tuesday?

A. Jerry Donini told me that he met with them. I don't recall when.

Q. Tell me as best you can what Mr. Diamond and Mr. Del Missier said to you and what you said to them in that meeting on the morning of September 16.

A. They said that they would like for me to join the firm running the credit business. Then we got into specifics of what that actually meant. And so it was -- they spoke about that it is credit trading, just high grade, high yield. We were comparing it to my function at Lehman. So not CDOs, not emerging markets.

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They explained the structure of the firm, how sales trading and research all roll up in separate verticals as opposed to having the whole business, and that I would be running the trading portion of the credit business.

We spoke about that for a while, because I thought that was a major structural difference, so we spoke about that for a while.

Then we spoke about what compensation they would be willing to offer me.

Q. What did they tell you about compensation?

A. They said they -- I had -- I had contracts from Lehman, and so they said that they were -- you know, they wanted to do what they could do to have me in as close to the same spot that I would have been in if I had stayed at Lehman and Lehman didn't go bankrupt to join Barclays.

Q. Did they give you a specific number, what that meant?

A. The specific numbers within -- for my '08 compensation for Lehman, the cash component was \$25 million. And so they said they would give

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me \$25 million for '08 compensation, split in cash and equity.

In Lehman, I had that in cash, so I said, you know, I said if it is doable all in cash, that that would be closer to keeping me in the same spot than not.

They had to check if that was doable, so there were a few days then after that before anything -- before I got anything back that indicated that -- but they said they would work to see if that made sense. They wanted to see the Lehman documents, as well.

Q. Meaning Lehman documents related to your compensation --

A. Yes.

Q. -- or the --

A. No, Lehman documents related to the compensation.

I told them -- I had gotten the Lehman money, I already had the cash. I told them I intended to give that money back to Lehman as well. And so if there was a way to have the Barclays money given to me earlier than the February date, which was the standard date, that

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that would be preferable. So they had to -- they checked on that.

And then we spoke about making sure that -- I said, look, I want this to be fair and us to have -- start to be a very good working relationship, so whatever we need to put in the contract so, you know, I am really going to be here and stay. I don't want to get this cash from you and then have the ability to leave.

So we wrote into the document that I had to stay until March of '09, otherwise I would have had to give that money back. And then --

Q. Give the '08 money back?

A. Yes.

And then -- I am trying to think if there are any other things. And then I wanted to make sure that most importantly, that I was going to be able to bring -- that the people in the credit business at Lehman, I was going to be able to make sure that they had jobs and that they were coming also, so we could keep the whole business together, and that I would have some ability to decide who of the people would have -- would be in each seat. So that I was actually empowered in

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the business, so that we spoke about that.

Q. And did they speak in that meeting on the Monday -- pardon me, the Tuesday morning, about '09 compensation?

A. I had '09 guaranteed for Lehman. That wasn't the way the Barclays deals were set up from what I was told. So it was for '08 and then for -- for a portion of the people, I don't know the number, there were retention payments that were one year from your start date and then two years from your start date, and so I was eligible for the retention payments, the two retention payments.

And that, I believe, was a set percentage of 25 percent of the '08 number. I believe that was the number. But there was no guaranteed -- no guaranteed '09 compensation.

Q. Other than a retention?

A. Other than a retention.

Q. And were there -- strike that.

When they finally got back to you on your request to have it all paid in cash, was the answer that yes, they would pay it all in cash?

A. Yes.

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Q. And was the answer also that they would pay it earlier than February?

A. Yes.

Q. And when did they pay it?

A. The date I believe was -- set in the contract was October 31st. I don't recall the exact date that the payment occurred.

Q. And no portion of your '08 income then was equity or stock in Barclays. It was all cash?

A. Correct.

Q. Now, when you spoke to them about bringing the people in your area over, did you ask whether or not there would be bonuses or payments available for them as well?

A. Yeah. There was the assumption that people were going to get compensated for -- that people were going to have employment contracts with Barclays.

Q. And when you say there was an assumption, what was that based on in your mind?

A. That people wouldn't -- you wouldn't get the people if you didn't compensate them. People wouldn't have come for nothing.

Q. Did there ever come a time when you

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heard that a specific pool of money had been set aside for the purposes of bringing people over from Lehman to Barclays?

A. Only when I read it in the New York Post.

Q. All right. So you have your meeting with Diamond and Del Missier on Tuesday morning, and following that meeting, you went back to Lehman, I take it?

A. Yes.

Q. And I would like you to describe for me your day, if you will, in general terms, and then we will come back as to what you were doing on Tuesday, the 16th.

A. Really for the rest of that week, it was just trying to keep the people together. People were out interviewing, people were getting job offers from other firms. There was a lot of uncertainty.

And I was also trying to relay any instructions that were given around what people sitting in the seats should be doing and that was -- that was the rest -- pretty much the rest of the week.

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Q. Did you ever see a copy of the asset purchase agreement that was entered into between Lehman and Barclays on Tuesday, the 16th?

A. I believe -- there was some document that was made public. I don't remember what day, whether it was Tuesday or Wednesday or Thursday. And I do remember it had -- it was -- it was up on the Web, and I remember it had like hand-scribbled notes all over it on the Web. That got e-mailed around everywhere. I don't know if that is that document, but there was some document that --

Q. Did you read it?

A. That I -- I -- I glanced through it. I didn't specifically --

Q. Do you recall anything about it?

A. I recall that there was -- there was a connotation of specific numbers of people that had to come to Barclays as part of the arrangement, or part of whatever the deal was.

Q. Did you ever see the master repurchase agreement between Lehman and Barclays?

A. No.

Q. Did you ever know there was one?

A. No.

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2 **Q. Just so we are not in terrible doubt,**
3 **we will find out whether it was the APA you looked**
4 **at.**
5 A. OK.
6 **Q. You don't know anything else about the**
7 **document that you saw online that had all the**
8 **handwriting on it that would help me determine**
9 **what it was you might have seen?**
10 A. I remember it got sent to me, because
11 this concept of eight people, like they started
12 calling it the elite eight, whatever document that
13 was in was getting sent around at the firm. So
14 that, whatever that document was --
15 **Q. That's the document?**
16 A. That would have been the one.
17 **Q. And you were one of the elite eight,**
18 **correct?**
19 A. I wasn't aware that I was.
20 **Q. The document didn't identify the**
21 **eight?**
22 A. I was never told that I --
23 **Q. No, but when you read the document,**
24 **was your name in it?**
25 A. No, I didn't see my name.

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1 FELDER - HIGHLY CONFIDENTIAL
2 (Exhibit 1, asset purchase agreement
3 dated September 16, 2008 marked for
4 identification, as of this date.)
5 MR. CARDEN: I think what -- who knows
6 how we will end up with this, but we will
7 make this Felder Exhibit 1. I think we will
8 end up with depositions being taken
9 simultaneously at some point later in the
10 schedule, which will make it awkward if we
11 do it any other way.
12 MR. STERN: What we had proposed, to
13 avoid duplicate exhibits, we have a system
14 of numerical numbering sequential, and when
15 we have multiple depositions, we just say
16 this deposition will take from 200 to 300.
17 MR. CARDEN: That's fine.
18 MR. STERN: This is the first
19 deposition. Why don't we start out that way
20 and see how it works.
21 MR. CARDEN: OK. So what we will do
22 is, 1 through 25, if we get that far, will
23 be Mr. Felder. OK, that's fine by me.
24 So it is Exhibit 1. Not Felder 1,
25 just Exhibit 1.

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1 FELDER - HIGHLY CONFIDENTIAL
2 **Q. Have you ever seen this document**
3 **before, Mr. Felder?**
4 A. No, not -- the document I saw had hand
5 notes on it. So this --
6 **Q. This clearly was not the document that**
7 **was the elite eight, I appreciate that. The**
8 **question is not whether this is that document, the**
9 **question is, have you ever seen this one before?**
10 A. This document, no.
11 **Q. OK. I would like to direct your**
12 **attention to page 6, and subparagraph D at the end**
13 **there, do you see the reference to government**
14 **securities approximating 70 billion?**
15 A. Yes.
16 **Q. Do you ever recall having heard from**
17 **anybody that Barclays was going to purchase**
18 **approximately 70 billion in government securities**
19 **from Lehman Brothers?**
20 MR. STERN: Objection to the form.
21 **Q. That's commercial paper, corporate**
22 **debt. I'm just talking about --**
23 MR. STERN: What it says in section D.
24 **Q. Whatever it says in section D. I will**
25 **rephrase that.**

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1 **FELDER - HIGHLY CONFIDENTIAL**
2 **Did you ever hear from anyone that**
3 **Barclays was going to purchase those types of**
4 **securities identified in subparagraph D which**
5 **approximated \$70 billion?**
6 A. No. I heard they were going to
7 purchase the broker dealer, which I assumed had
8 assets. I didn't know the exact numbers.
9 **Q. You never heard a number 70 billion?**
10 A. I don't recall.
11 **Q. For that matter, you never heard a**
12 **number 72 billion?**
13 A. I don't know.
14 **Q. Did you ever hear at any time a**
15 **specific number of the value given to the assets**
16 **that were purchased by Barclays from Lehman**
17 **Brothers?**
18 A. After the fact -- after everything, I
19 do recall Eric Bommensath, people throwing around
20 the number 50 billion afterwards.
21 **Q. So this is after the transaction**
22 **closed, Mr. -- I am having trouble with the name?**
23 A. Bommensath.
24 **Q. Bommensath.**
25 A. I do recall him throwing out the

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number 50 billion.

Q. 50 billion of assets had been purchased by Barclays?

A. I recall that.

Q. Did he say that to you personally?

A. I was -- I don't know if it was just me and him or whether it was a group. I remember, I remember him saying we have 50 billion worth of assets.

Q. And do you remember when he told you that?

A. It was already over at 200 Park. It was probably in October.

Q. Do you remember what occasioned him to have this conversation with you? Were you talking about the transaction?

A. We were going through, we were going through the, you know, set -- he wanted to set up a series of reports to keep track of -- that the sales force was working on selling, once the firms were together, and I asked the question is there anything that, is there anything that now that we are up and running, that the sales force should be working on, and those -- he said, well, that, that

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50 billion is off in a different -- the 50 billion is off in a different group basically.

Q. So the 50 billion in assets that had been purchased by Barclays were not in your group --

A. Right, exactly.

Q. -- for the purposes of the sale?

A. Exactly.

MR. STERN: Let him finish the question.

Can I hear the question?

(Record read)

MR. STERN: Objection to the form.

You can answer.

A. They weren't in, they weren't in the credit business that I was going to be responsible for.

Q. Did he tell you where they were?

A. It was in a group called P -- PMTG.

Q. Do you know who -- do you know what that group is, what it does?

A. I believe it is -- I believe PMTG stands for principal mortgage -- I don't know the last two letters. So it was principal positions.

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Q. Do you know who is head of that group at Barclays?

A. It is either Stephen King or I believe at the time it was David Martin. It was one -- David Martin is no longer with the firm. It is one of those two people, and it might roll up into John Mann now. I don't know the exact setup.

Q. Do you have an understanding of what that group at Barclays does?

A. Not with precision. I know that they have assets and that they -- and that they trade in the securities.

Q. Am I right in understanding what you are saying is that that group deals with proprietary positions at Barclays?

A. I don't know if it was proprietary. I have only heard the word "principal."

Q. So you don't have an understanding of whether that's a category of investments, or pardon me, a category of assets that are considered proprietary assets to Barclays?

A. I don't know how they categorize it.

Q. Before that conversation with Mr. Del Missier in which he said there had been

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\$50 billion dollars assets --

MR. STERN: Objection, objection.

A. Mr. Bommensath.

Q. I'm sorry, Mr. Bommensath.

MR. STERN: Objection to the form.

Q. Before the conversation with Bommensath in which he told you there had been \$50 billion of assets purchased by Barclays, did you have any conversations with anyone in which the value of the assets purchased by Barclays was discussed?

A. No, just those -- the meetings that I had mentioned over the weekend.

Q. Let's make this Exhibit 2.

(Exhibit 2, e-mail with attachment dated September 18, 2008 marked for identification, as of this date.)

Q. Have you ever seen Exhibit 2 before, Mr. Felder? Let me rephrase.

Have you ever seen any part of Exhibit 2 before, if you haven't seen the whole?

A. No, I don't recall seeing this.

Q. Have you ever seen a document like page 2? This chart, summary chart?

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A. I would have summary risk reports for my business -- for the businesses. But it was credit. We hadn't gotten to the point in fixed income where -- because it was only four days.

Q. Which of the areas identified on page 2, if you could tell me, were the areas for which you had responsibility, which asset classes?

A. At what -- when?

Q. The week of September 15, or the last days of the week before, if you weren't really doing anything the 15th. Let me say it another way.

Which of these asset classes were, given your understanding of what position you were to have starting on September 8, would have been within your areas of responsibility?

A. Total CDs and nonmoney market.

Q. OK.

A. I don't know what the second term means with "spot." If it is just corporate bonds, then it would, but I don't know what the term "spot" --

Q. Are you talking about total corp. obligations and spot, that category?

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A. Yeah. If it is corporate credit risk and bonds, then it would. But I don't know what corporate obligations -- I don't know what that phrase means.

Q. OK.

A. A portion of derivatives, if it was within fixed income.

Q. OK.

A. And this would have been in my role as cohead of fixed income if I had been told what I would have been responsible for. Governments and agencies and mortgages and mortgage backs.

Q. Do you ever remember participating in any effort to create a balance sheet for just LBI itself?

A. No.

Q. And did you ever do any kind of calculations to determine the value, the marks of the positions if you will, that were within your area of responsibility?

A. No.

Q. And do you know if there at page 2 of this exhibit is, in fact, an effort to do just that as to certain aspects of the portfolio?

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A. I don't know.

Q. Do you recognize the spreadsheets that follow page 2 as being listings of the investments or the securities within the various asset classes and the summary page 2?

MR. STERN: Objection to the form.

A. It looks like a list of securities to me.

Q. And the valuations that are provided would have been provided by the various traders on the desks in question, correct, whoever was trading these particular securities?

A. I don't know what the data -- where this -- where the data from this report would have come from.

Q. Could the valuations have come from anyone other than the traders?

MR. STERN: Objection to the form.

A. I don't know.

Q. And in any event, you didn't provide any valuations?

A. No.

Q. To any of these positions?

A. No.

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Q. Now, did there ever come a time, Mr. Felder, where you were asked to help prepare Mr. McDade for his testimony on Friday before the bankruptcy court?

A. No.

Q. Did there come a time when you were asked to provide a fire sale liquidation price for the positions within your area of responsibility?

A. No.

(Exhibit 3, document Bates stamped 1029780 marked for identification, as of this date.)

Q. Mr. Felder, I show you what has been marked as Exhibit 3, which is an e-mail from Mr. Kirk to some unknown address. But it has with it underneath an e-mail that was sent from -- by Mr. Flores to a group of people including yourself on Thursday evening at 8:40.

Do you recall having gotten this e-mail, sir?

A. I don't.

Q. Do you have an understanding of what is meant by the phrase a fire sale liquidation of the securities that are being transferred to

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Barclays?

MR. STERN: Objection to the form.

A. Can you repeat the question.

(Record read)

A. My understanding of the term "fire sale" would be someone who had to sell securities in a very short time frame.

Q. Most of the securities in your area of responsibility were very high grade, were they not?

A. In credit, there was high grade, there was high yield, there was distressed. There were different types of securities within credit.

Q. Would you just go back to Exhibit 2 for a moment and look at the summary chart. The listing there for total governments and agencies at 37.6 billion long, do you see that?

A. Yes.

Q. Those are very high grade, are they not?

A. I don't know what's in there, but if it is -- if it was U.S. Government bonds, that would be very high grade. If it was senior agency paper, that would be very high grade, that would

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be high quality. But if it was subordinated, it might not be.

Q. Anything else that would be very high grade that would be within the asset classes that were in your area of responsibility, other than those two?

A. Investment grade corporate bonds would be high quality. And then I would assume that there is some very high quality mortgage paper, but I'm not a mortgage expert.

Q. The sale of those kinds of high-grade securities, does it ever -- strike that.

The markets for those very high grade securities that you just articulated are quite large, are they not?

A. The aggregate markets, yes.

Q. And the amounts that are listed here of 37 billion, if that includes all of them, that's not a very big number in terms of the overall market in those securities, is it?

A. No.

Q. The market can easily absorb those sales without changing the market, couldn't it?

A. It would depend on -- it would depend

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on the securities. If there were ten-year Treasuries, the market could withstand that, yes.

Q. Could you contemplate a situation in which there would ever be a fire sale price for the sale of ten-year securities -- ten-year Treasuries? I mean you would have to actually sell it for a lower price because the market couldn't bear it?

A. There have been times in history where even the government market had been very illiquid, like around long-term capital management, for example.

Q. OK. That wasn't the case on the week of September 15, though, was it?

A. The markets were certainly very volatile, given everything that happened to Lehman. But government bonds were trading liquidly, I believe.

Q. Do you have any understanding or recollection of what was meant then in connection with the phrase "fire sale liquidation" when -- I know you don't remember getting the e-mail, I'm not trying to suggest that.

MR. STERN: Can I hear the question.

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Q. It really is -- I have got to rephrase it.

I'm trying to understand, if you can assist me, Mr. Felder, what possibly could have been meant by that "fire sale liquidation" phrase on that Thursday night in this memo.

MR. STERN: Objection to the form.

A. I can only make a -- I can only make an assumption, if I had -- what I would think, not what the writer meant.

Q. Of course. Tell me what you think. You -- I mean after all, you presumably were -- let me start again.

Someone asked you to make this assumption for the purposes of valuing a portion of the portfolio for which you had responsibility, correct? That's what this is asking you for?

MR. CERESNY: Objection.

MR. STERN: Objection to the form.

What's the question?

(Record read)

Q. Let me be more precise. Mr. Daniel Flores asked you on Thursday evening, September 18, to assume a fire sale scenario for

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the purposes of valuing the portfolio for which you had responsibility, did he not?

A. That's what this e-mail looks like it requested.

Q. So what you thought "fire sale liquidation" meant means something to me. How would you have understood this when you received it? Even if you don't recall now having gotten it, what would be your assumption as to what was meant?

MR. STERN: Objection to the form. I think he has already answered that.

But you can answer again.

A. I would say it would mean what would the price be for selling the securities in a very short time frame.

Q. What time frame?

A. Basically instantaneously -- like -- close to instantaneously.

Q. Would the need to sell U.S. Treasuries instantaneously, let's call it on Friday morning, the 19th, have resulted in significantly or any lower price for the Treasuries in your mind?

A. I'm not a Treasury expert.

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Q. Let me ask it this way. Of the asset classes for which you had responsibility on Friday morning, September 19, which, if any, would have had a reduction in their value as a consequence of having to sell them instantaneously, given the quantities involved and the asset classes involved?

A. I don't -- I can really talk about credit.

Q. Talk about what you can talk about, Mr. Felder.

A. I think credit, credit, there would be a credit -- the liquidity in the credit market is substantially lower than the government bond market. So that there would be, in my opinion, a discount to move a block of corporate credit in an instantaneous fashion.

Q. Without regard to the quantity?

MR. STERN: Objection.

Have you finished your answer?

I mean there was a question pending and an answer being given. Can I get the question?

(Record read)

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THE WITNESS: What was my answer?
(Record read)

MR. STERN: Did you finish?

THE WITNESS: Yes, I am finished.

Q. Finished? OK.

Look at Exhibit 2, if you will, on the summary chart that has been helpful to us in the past. Can you tell us which securities to which you were just referring were corporate credits?

A. I don't know what these definitions are.

Q. OK.

A. As I have said. So if the definition of this second bucket, corporate obligations, would be corporate credit, then I would say that that would -- that would be an example.

Q. You are referring now to the second entry there in the column "Total Corporate Obligations and Spot," which shows a long position of 4 -- about 4.9 billion?

A. That's what it looks like.

Q. Are there any other securities on this chart that you think would, if they had to be sold instantaneously on Friday morning, have resulted

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in a diminution in their value in the market?

MR. STERN: Objection to the form.

A. I'm really only comfortable talking about credit, because that's the market I knew.

Q. OK. But you did have responsibility for derivatives, right? In the fixed income area.

A. For credit derivatives.

Q. Credit derivatives?

A. Correct.

Q. Would they have had significant diminution in their value on Friday morning as a consequence of the need to sell them instantaneously?

A. They would trade like a credit product, so there would be -- to move a big block of CDS would definitely create -- you would need some discount.

Q. What would you mean by a big block?

A. I would say north of 2 billion.

Q. OK. What kind of discount would you give it?

MR. STERN: Objection to the form.

A. It would depend on the names that were in the portfolio.

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Q. Can you give me a range? I'm just trying to get a feel, half a percent, 20 percent? I'm trying to get a feel for what the discount would be in your mind.

A. It would depend -- the market trades on spread, so it would depend on which the specific credits were and then what the aggregate size was.

So, for example, financials were under a tremendous amount of pressure at this point. If it was an entire financial credit portfolio, that would be very difficult to move.

Q. Would your answer be different if they were exchange traded? And by that I mean would the discount be either nonexistent or small in the disposition of an exchange-traded derivative on an instantaneous basis the morning of September 19?

A. If it was a liquid product traded on -- if there was more liquidity in the product based on it being on an exchange, then the answer would be yes.

Q. Yes, that there would be --

A. If the product were more liquid because it was on an exchange, then a discount

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would be lower if there was more liquidity because of that.

Q. Why would there be a discount at all on -- you would either be able to sell it on the exchange or you couldn't. Why would there be a discount in any respect with regard to the exchange-traded derivative?

A. What I mean by discount, if you went to go on -- in any market, there is a size on let's say the bid or the offer, and if you go to transact, when you're done transacting, the price isn't necessarily at the same spot that you started.

Q. OK.

A. So I would mean the average price that you ultimately sold compared to where it started could be different, even on an exchange.

Q. OK, OK. Let's go back to our chart here for a moment. You covered corporate obligations and you covered the derivatives. You say you don't --

MR. STERN: Objection to the form.

Q. You say you don't have specific or personal knowledge of the Treasuries, but the

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Treasuries is a huge market and the -- clearly there would not be any meaningful discount with regard to the disposition of those on an emergency basis, would there?

A. I would say for on-the-run Treasuries, I wouldn't think there would be, but I assume there are some Treasury securities that have less liquidity than others. But in aggregate the U.S. Treasury market is a very, very liquid market.

Q. Let me ask it this way. Did there ever come a time, Mr. Felder, where you asked your traders to price the securities in Exhibit 2 as though they were going to be sold on a fire sale basis on Friday, September 19?

A. I don't recall doing that.

Q. Do you recall having been asked by anybody to do that?

A. I don't, because I don't recall that e-mail.

Q. Is there -- do you have any explanation for me at all as to why anybody would have wanted you to do that?

A. I can make an assumption.

Q. Tell me.

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A. That to put a theoretical price on a pool of assets that would be a worst-case scenario.

Q. But you never recall having done that?

A. No.

Q. Or having talked to Mr. McDade or Mr. Flores or Mr. Kirk about having done so?

A. No.

Q. Did you ever hear anybody else at the firm had done so with regard to the portfolios for which they had responsibility?

A. I recall getting a -- I recall getting an e-mail around the -- around mortgages and around a discount, a discount to the market price for mortgages, and I believe I forwarded it to Mike Gelband. I do remember that.

Q. From whom did you get it?

A. I don't remember. I would just have to assume that Charlie Spero would have been on it because he ran mortgages.

Q. Did you ever get an explanation for why that -- strike that.

OK. Let's soldier on here with regard to Thursday night.

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MR. STERN: How are we doing in terms of taking a break? It is about 11. Are you at a point --

MR. CARDEN: Yeah, maybe in about 15 minutes. Is that OK?

THE WITNESS: I'm fine.

Q. You told me you don't remember getting Exhibit 3, which was Thursday night, right? Do you remember whether you were in the office on Thursday evening, the 18th?

A. I don't.

Q. You note in Exhibit 3, it references a list of top 100 positions, which is going to be left on the desks of each of the people to whom the e-mail is addressed. Do you see that?

Do you recognize or can you tell me if Exhibit 2 is in fact a list of the 100 largest securities in the area for which you had responsibility?

A. I -- only the cover e-mail says, "Here are the position level details for the top hundred longs and shorts," so I can only assume that this document is that.

Q. I will draw your attention to the fact TSG Reporting - Worldwide (877) 702-9580

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that Exhibit 3, which is in Greenwich Mean Time, with the hour difference then I can tell you is four hours. Do you remember that time period? There's about a week or two in the year where the time change is four hours. We are in that period right here.

So to start again, I will tell you that Exhibit 3 is 8:41 in the evening on Thursday.

A. OK.

Q. And you can observe -- actually this is in Greenwich Mean Time as well, but Exhibit 2 is at 7:17. So it is within an hour or so, the same time period. Do you see that?

MR. STERN: You are asking if he sees what?

Q. Well, let me ask it this way. Do you know, Mr. Felder, whether Exhibit 2 is the list of securities, your portion of it, that was left on your desk or was going to be left on your desk pursuant to the paragraph in Exhibit 3?

A. I know that this says, "Here are position level details for top hundred longs and shorts," so I would assume that's what this is.

Q. That's what I had done, but you don't TSG Reporting - Worldwide (877) 702-9580

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have a recollection of it?

A. No.

Q. And you don't remember having sat at your desk at Thursday evening and have somebody come in and say, here is the hundred largest positions in your area, go value them?

A. No, no.

Q. And you have no recollection of having told anyone in your area to go do that?

A. No.

Q. Would there have been anyone else in your area that would have done that for you if you weren't available?

A. The people below me, there is always a chance that someone like Alex would have reached out to someone directly if he didn't get me and there was something that was time sensitive.

Q. You carry a BlackBerry, right?

A. Yes.

Q. So there is no doubt in your mind, is there, that you would have seen Exhibit 3 on or about the time it was sent to you, right?

A. If I was looking at my BlackBerry, I would have seen it.

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Q. And you have no recollection of having asked for anybody to assist you in responding to the request in Exhibit 3 then?

A. I don't recall doing that.

Q. It is a total blank?

A. I don't remember doing it.

Q. OK. Do you remember anything about Friday morning, the 19th, where you were, what you were doing?

A. I believe I had breakfast with Tom Montag that morning.

Q. Who is Tom Montag?

A. He runs capital markets at Merrill Lynch. Or Merrill Lynch, B of A.

Q. Why were you having breakfast with him?

A. He expressed interest in having me come and run the credit business over there.

Q. Now, by Friday morning, the 19th, had you received a contract from Barclays?

A. I believe I got a draft on Friday, but I don't believe it was Friday morning. I don't recall exactly.

Q. Do you recall having gotten a draft

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BCI-EX70957 marked for identification, as of this date.)

Q. Mr. Felder, showing you what has been marked as Exhibit 7, which is an e-mail from Mr. Lowitt to three people, I think, including yourself. Do you see that?

A. Yes.

Q. Maybe that's four people. Do you recall having gotten this e-mail?

A. No, not specifically.

Q. Well, do you remember generally having met with anybody at Barclays, now that you have seen this, on September 19th, to talk about positions and marks?

A. No.

Q. Do you remember having received, in the early morning hours of September 19 and into the morning, spreadsheets reflecting positions in areas for which you had responsibility?

A. Not specifically.

Q. Let's mark a couple of them here. Mark this as Exhibit 8.

(Exhibit 8, e-mail September 19, 2008

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at 10:51 a.m. with attachment marked for identification, as of this date.)

Q. Have you ever seen Exhibit 8 before?

A. No.

(Exhibit 9, e-mail dated September 19, 2008 at 2:06 p.m. with attachment marked for identification, as of this date.)

Q. Mr. Felder, showing you what has been marked as Exhibit 9, which is an e-mail from Mr. Kirk to, again, an address that is unrecognizable, but it has attached to it an e-mail from Mr. McGarvey to a group of people including yourself on Friday morning at 10 o'clock.

Do you remember having gotten this e-mail?

A. I don't.

Q. And I take it you have no recollection of having gotten the attachment?

A. Correct.

Q. And this CD and MM pricing, CD and MM, that would be in your area, right? That would be money market and CDs. That was something that you identified previously as being something that was

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in fixed income?

A. That would have been in fixed income.

Q. Does this document assist you in any respect in recalling what was taking place on Friday morning with regard to the valuation of positions that were within your area of responsibility?

A. No. I don't recall being in the meeting.

Q. And it is still your recollection -- strike that.

It is still the fact that you don't recall having met with anybody from Barclays about pricing of any of these securities?

A. I don't recall.

Q. Going back to Exhibit 7 for just a moment. Would there have been anyone else in -- among Mr. Amin and Mr. Donini and Mr. Spero who would have understood or known the process of providing valuations for assets within your area?

A. Hyung Lee was the cohead of fixed income, and then within the different asset classes, Jim Seery or Fred Orlan would have been a high yield or leveraged loan person. Charlie

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would have been a mortgage person.

Q. Charlie?

A. Charlie Spero.

Kaushik would have been rates, commodities and FX. John Coughlin would have been repo or anything short term, and Mike Gelband and Alex would have been the other two.

Q. What about corporates? Who would have --

A. Anything for corporates, for corporates, it would have been me.

Q. So pricing for any corporate obligations would have been something that you would have been most familiar with as opposed to the people you just mentioned?

A. Yes. If they asked for a price on an investment grade corporate bond that -- they would have come to me or someone below me.

Q. What was happening in -- let's take it a step at a time. If you go back to, I think it was Exhibit 2, just as a frame of reference, this summary of asset classes, is it possible for you to assist me as to what was going on in the market in a general respect from, say, the end of the

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week of September 15 for each of these asset classes?

A. I could really only talk to the credit side.

Q. OK, give me that.

A. Spreads were widening significantly on the back of the Lehman bankruptcy, specifically within financials.

We weren't -- we weren't trading so I could -- because we were bankrupt, so there weren't -- you could only just watch your Bloomberg screen, so obviously the equity markets were going down a lot. There was a lot of volatility, and in general, spreads were significantly wider.

Q. No way for you to quantify that in any general respect or -- did it change through the week? Did it spike, did it flatten, did it --

A. No. I -- I don't remember the exact numbers on things, but there were some things that were north of a hundred basis points wider over the course of that week.

Q. You said Coughlin was responsible for repos? I think that's what you said in passing.

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A. He ran financing for fixed income.

Q. Let's go back to Tuesday. We were talking about Tuesday, September 16, and what you were doing that day.

If you had come into the office, I would like you to tell me as best you can, just try to walk through the week as to what else you were doing on that Tuesday and the Wednesday and Thursday as well.

A. On the Tuesday, there was the meeting with, I believe it was Tuesday, with Jerry and --

Q. That's where we left you, we left you with Mr. Diamond and Mr. Del Missier.

A. Right.

I recall that most of the rest of the week was trying to keep the team together and talking to all the individual people within the credit business who were out interviewing and getting job offers to try to keep the team together.

Q. Were you meeting with Barclays during that time period on what I'll characterize as, you know, the asset classes for which you had responsibility or anything else? Other than your

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compensation.

A. Yeah. I had coffee with Eric Bommensath, I don't remember which day it was, it was either -- I believe it was Tuesday or Wednesday, who was going to be my boss. And we started -- he wanted the names of what I deemed to be the top people within the credit space. So we spent time going through that and just talking about the business overall.

Away from that, I don't recall any specific meetings with Barclays.

Q. Did you meet with any lawyers that week? Going on from Tuesday or the Tuesday meeting with Mr. Diamond, after that --

A. Right.

Q. -- did you meet with any lawyers?

A. No.

Q. Did you ever meet privately with Mr. McDade?

A. I don't recall meeting with him privately.

Q. Did you ever have a private meeting with Mr. Kirk concerning the transaction and, you know, what had been agreed upon by the parties?

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A. No.

Q. What about Mr. Kelly? Did you have any conversation with Mr. Kelly that week? Martin Kelly?

A. Martin -- no.

Q. Do you even know Martin Kelly?

A. I know the name.

Q. Who do you know him to be?

A. I knew him to be sort of a -- I don't know what his exact function is, but I knew him to be sort of a right-hand person to the CFO, to Ian. But I couldn't tell you exactly what his function is.

Q. Did you ever tell or write to anybody that Barclays was cherry-picking assets?

A. I don't recall doing that.

Q. Do you recall ever having written anybody to the effect that Barclays was choosing the assets which they wanted to purchase?

A. I did think that Barclays was choosing and pricing assets. That was just the impression -- that was the impression.

Q. What was that impression based on?

A. I guess I remember Mike Keegan at --

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2 in one of the meetings, I think it was, I guess
3 that Monday.

4 **Q. Monday, the 15th?**

5 A. I believe. Just the way he asked
6 about -- on the corporate side, I remember him
7 asking about auction rate securities and saying
8 like what -- like are you comfortable with these,
9 and I remember saying, yes, we were comfortable
10 with them.

11 **Q. Anything else?**

12 A. No, that's what I -- I remember that.

13 **Q. It may be my confusion, I apologize if
14 it is, but I thought I understood you to say that
15 you thought that Barclays was buying the entire
16 broker dealer. How does that square with the fact
17 that they are selecting assets to purchase? I
18 don't understand how those things are consistent.
19 Maybe they are, but I don't understand.**

20 MR. STERN: Objection to the form.

21 A. I don't know that -- I just know what
22 I had heard about what the transaction was, that
23 they were looking at buying the broker dealer. I
24 don't know the specifics of how a transaction like
25 this would occur.

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2 **Lehman Brothers as opposed to the entire broker
3 dealer?**

4 MR. STERN: I think you should take a
5 chance to read the document.

6 THE WITNESS: OK.

7 A. What was the question?

8 (Record read)

9 A. I just remember them asking opinions
10 on things which led me to believe that a decision
11 process was being made.

12 **Q. OK. Do you remember them asking you
13 about anything or speaking about anything other
14 than auction rates?**

15 A. That was all I recall being asked.

16 **Q. Did you ever have a conversation with
17 anybody at Barclays about the valuations of any of
18 the positions or asset classes in the area of your
19 responsibility?**

20 A. What do you mean by value -- by
21 valuation?

22 **Q. Marks.**

23 A. Like where are things marked? Around
24 the auctions, based on the -- where the prices
25 were, I remember them -- I remember Mike Keegan

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2 **Q. But you also knew during that week,
3 did you not, that Barclays was picking the assets
4 they wanted to purchase?**

5 A. I knew they were looking at the -- at
6 all the different assets and forming opinions on
7 them.

8 (Exhibit 10, e-mail dated September
9 17, 2008 at 12:34 p.m. marked for
10 identification, as of this date.)

11 **Q. Mr. Felder, I show you what has been
12 marked as Exhibit 10. Midway on the first page,
13 there is an e-mail from you to a collection of
14 people where you are stating that the Barclays
15 folks picked the assets and recall them saying
16 they didn't want the auctions carries, but I
17 wasn't in the meeting.**

18 **Do you see that?**

19 A. Um-hm.

20 **Q. You mentioned about the auction rates
21 in your conversation.**

22 A. Because I remember -- yes.

23 **Q. Does this document refresh your
24 recollection to any extent that Barclays was
25 interested in only purchasing certain assets of**

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2 asking, you know, what do you think of these
3 securities at these prices?

4 **Q. OK.**

5 A. And I recall saying to him that I
6 think you're going to get -- ultimately people
7 would get their money back on these securities
8 from -- because they were at a discount. They
9 weren't marked at par anymore, given what went on
10 in that market. But that over time, those assets
11 would -- you would ultimately get your money back.

12 **Q. Were the auction rates within your
13 area of responsibility, within fixed income?**

14 A. Yes.

15 **Q. And you know they didn't move to
16 Barclays, right?**

17 MR. STERN: Objection, objection to
18 form.

19 A. I don't know that they didn't move to
20 Barclays.

21 **Q. The conversation that you had with
22 Mr. Keegan on Monday about -- you think it was
23 Monday -- about the auction rates, was this a
24 face-to-face meeting that you had with him?**

25 A. Yes. It was in that -- it was up on

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32.

Q. In that room where you were escorting some people in and occasionally staying yourself?

A. Correct.

Q. Do you recall having spoken about any other asset classes or any other types of assets other than auction rates in that room to Barclays people with regard to marks?

A. No.

Q. Were you aware during the week that there was a real interest or focus on the marks that were being placed on the asset classes, or the positions rather, in your area of responsibility?

A. Well, based on -- based on, for example, that mortgage e-mail, there was focus -- the -- I don't want there to be a disconnect between my technical area of responsibility, given the job that I had gotten four days before, and what I -- what I really had a knowledge of, which was the credit piece. So I -- I did have the sense that there was focus on the marks of positions, but they weren't my areas of expertise.

Q. Did you ever instruct any traders

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within any area of fixed income during the week of September 15 to provide you marks on any positions?

A. I don't recall specifically asking for marks from people.

Q. Did you ever instruct any traders within your area of responsibility to mark down any assets within the fixed income area?

A. I don't recall instructing anyone to mark.

Q. Can you tell me who would have had the conversation with the trader concerning the mortgages that you have seen previously in terms of providing marks for those?

A. It would have gone through Charlie Spero.

Q. OK. Did you ever have a conversation with anyone at Lehman Brothers, Mr. Felder, about a discount being provided to Barclays on its purchase of Lehman assets?

A. I don't recall any specific conversations.

Q. Did you ever hear generally that Barclays had been provided a discount in its

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purchase of Lehman assets?

A. Well, that mortgage e-mail, for example, would give that indication, so that would be an example of something that --

Q. OK, thank you for that. Other than the indication and the specific instance concerning the mortgages, did you ever hear of any, I'll call it global discount given to Barclays for -- in purchase of the Lehman assets?

A. No, I don't recall hearing about that.

Q. Did you ever read anywhere or hear from anyone that Barclays had purchased certain valuation or value of Lehman assets for a discount?

A. No, not specifically.

Q. Were you aware that on Tuesday morning, Mr. Diamond and I think others at Barclays had an analyst conversation, telephone conversation?

A. Analysts?

Q. Yeah. They had a telephone conversation with various people?

A. No.

Q. You weren't on it, in any event?

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A. No. What do you mean by analyst?

Q. Not analysts, they were investors. It was an investor call and a collection -- I don't know who got access to the call. All I've seen is a transcript, there was an investor call --

A. No.

Q. -- of some kind, and my question is, were you on that call?

A. No.

MR. STERN: Just so the record is clear, I think in one of the previous answers Mr. Felder referred to "that mortgage e-mail," and I believe he was referring to Exhibit 6, just to avoid any confusion.

MR. CARDEN: Let's mark this Exhibit 11.

(Exhibit 11, document Bates stamped 10284073 marked for identification, as of this date.)

Q. Have you seen Exhibit 11 before, Mr. Felder?

A. I believe Dan was the one who was sending out the updates. He was a lawyer, so he

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2 **the evening, or 5 rather. No, 10.**

3 **Do you recall having gotten this?**

4 MR. STERN: Let's read it first.

5 A. I don't recall it specifically.

6 **Q. Well, do you recall generally there**
7 **being any conversation about the need to shrink**
8 **the matched book?**

9 A. I don't recall that. I recall the --
10 I recall instructions from Ian to make sure that
11 the traders weren't doing things that sent cash
12 out of the firm. I remember that as a broad
13 instruction that he gave.

14 **Q. Do you have an understanding of what**
15 **is meant by shrinking the matched book in this**
16 **e-mail from Mr. Lowitt?**

17 A. A matched book is a repo book where it
18 is matched, so there are two sides to it. So if
19 you shrunk a matched book, you would eliminate
20 both sides and then the aggregate size would be
21 smaller.

22 **Q. Do you have any memory at all as to**
23 **why there was a need in his mind to shrink the**
24 **matched book?**

25 A. No.

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2 **Q. Did you have any conversations with**
3 **anybody about needing to shrink the matched book**
4 **during the week of September 15?**

5 A. Not that I recall.

6 **Q. What did you mean when you wrote here,**
7 **"What about the line from BACR," that's Barclays**
8 **credit? Is that what that is supposed to mean?**

9 A. I would assume that's Barclays.

10 **Q. What did you mean by that?**

11 A. I had -- I -- guess I was asking
12 whether there was -- whether Barclays was going to
13 finance Lehman, whether that was --

14 **Q. Were you aware at or about this time**
15 **that the Fed had done a repo with Lehman?**

16 A. No.

17 **Q. So I take it you're not aware of**
18 **whether Barclays was going to take over the Fed's**
19 **position in connection with that repo?**

20 A. No, not aware of that.

21 MR. CARDEN: I'm done.

22 ----
23
24
25

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2 **EXAMINATION BY**
3 **MS. TAGGART:**

4 **Q. My name is Erica Taggart. I represent**
5 **the creditors committee.**

6 **I have some question, mostly directed**
7 **to finding out who might have some of the**
8 **information you didn't know.**

9 **Did you work at all -- I believe**
10 **Mr. Carden asked you that you weren't involved in**
11 **any repurchase agreement with the Federal Reserve,**
12 **right?**

13 A. Correct.

14 **Q. Do you know anyone who was involved**
15 **from Lehman in dealing with the Federal Reserve in**
16 **connection with the primary dealer credit**
17 **facility?**

18 A. I can only make an assumption as to
19 who it would be.

20 **Q. OK. Who do you know that that might**
21 **fall under their responsibilities at Lehman?**

22 A. I would think it would fall within the
23 Treasury function. So either Ian Lowitt or Paolo
24 Tonucci, who would be the treasurer. Those would
25 be the two people.

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2 **Q. Did you speak with Mr. Lowitt or**
3 **Mr. Tonucci about anything related to the Federal**
4 **Reserve at this time?**

5 A. No. Not that I recall.

6 **Q. Did you speak to anyone related to the**
7 **repurchase agreement related to the Federal**
8 **Reserve?**

9 A. No.

10 **Q. Now, I understand that you didn't**
11 **prepare any witnesses for the sale hearing; is**
12 **that correct?**

13 A. I am sorry, prepare any?

14 **Q. Witnesses for the sale hearing that**
15 **happened on September 19.**

16 A. No.

17 **Q. Do you know anyone at Lehman who did**
18 **prepare anyone for the sale hearing?**

19 A. No.

20 **Q. Did you ever have any interaction with**
21 **JP Morgan during the week of September 15?**

22 A. No.

23 **Q. Do you know who at Lehman did have any**
24 **interaction with JP Morgan at this time?**

25 A. I would only be assuming again. I can

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2 give you a list of people who it might be, but I
3 don't know.

4 **Q. Who are the people at Lehman that it**
5 **was your understanding within their**
6 **responsibilities would be working with JP Morgan**
7 **prior to the sale transaction?**

8 A. I would think it would be Ian and
9 Paolo, again.

10 **Q. Besides the people that you mentioned**
11 **earlier today, do you know anyone else at Lehman**
12 **who was involved in valuing any assets or**
13 **securities that became part of the sales**
14 **transaction?**

15 A. Not specifically.

16 **Q. Is there anybody else besides those**
17 **that you have mentioned today who it was within**
18 **their area of responsibility to do valuations of**
19 **securities or assets at Lehman?**

20 A. Can you repeat the question.

21 (Record read)

22 A. What do you mean by -- obviously
23 traders mark --

24 **Q. Right. Besides the traders, I think**
25 **you said that the traders then give their**

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1 **FELDER - HIGHLY CONFIDENTIAL**
2 **information to the different department heads.**
3 **You deal with the credit and fixed income. Is**
4 **there anyone else that you know of who during this**
5 **time was collecting information from traders about**
6 **valuation of assets that might go to Barclays?**

7 A. The -- oh, specifically -- no, not
8 specifically.

9 **Q. And it is my understanding you weren't**
10 **involved in the negotiation of any of the**
11 **contracts that related to the sale of assets to**
12 **Barclays, correct?**

13 A. Correct.

14 **Q. Who do you know at Lehman who was**
15 **involved in that negotiation?**

16 A. I could only -- I could only make an
17 assumption. I don't know specifically.

18 **Q. Who were the people that you believe**
19 **might have been involved in negotiations with**
20 **Barclays over the sale?**

21 A. Bart McDade, Alex Kirk, Mike Gelband.
22 These are just -- this is just -- would be my
23 assumption.

24 Potentially Skip McGee, ran investment
25 banking. Mark Schaefer.

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2 **Q. What was Mark Schaefer's role?**

3 A. He -- I think he was head of M&A.

4 **Q. Did you ever speak to anybody about**
5 **any terms or conditions about the sale**
6 **transaction?**

7 A. No.

8 **Q. Did you ever have any involvement with**
9 **the DTC, Depository Trust and Clearing**
10 **Corporation?**

11 A. No.

12 **Q. Do you know who at Lehman was**
13 **interacting with the DTC at this time?**

14 A. I don't.

15 **Q. Were you involved at all in the**
16 **decision about what amount, if any, of the**
17 **residential mortgage backed securities would be**
18 **part of that transaction?**

19 A. No.

20 **Q. Do you know who was involved in those**
21 **decisions?**

22 A. I don't.

23 **Q. The weekend between -- the weekend of**
24 **September 20 and 21, were you involved in any**
25 **meetings with Barclays during that time?**

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2 **A. Weekend of the 20th and 21st? I**
3 **was -- that weekend I was working with Eric**
4 **Bommensath around coming up with contracts for the**
5 **people that would be on the team in credit.**

6 **Q. Any other meetings with anyone from**
7 **Barclays?**

8 A. No.

9 **Q. Were you involved at all in the**
10 **assessment of the value of the goodwill of LBI**
11 **that was purchased by Barclays?**

12 A. No.

13 **Q. Do you know who was involved in that**
14 **valuation?**

15 A. No.

16 **Q. Were you involved in any valuation of**
17 **real estate?**

18 A. No.

19 **Q. Do you know who would be involved in**
20 **that valuation?**

21 A. Mark Walsh ran our real estate group,
22 but I don't know who was involved in valuing it.
23 (Exhibit 15, document Bates stamped
24 BCI-EX30865 with attachment marked for
25 identification, as of this date.)

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Q. Exhibit 15 goes from the numbers BCI-EX30865 -- actually that's the cover e-mail, and then there is a number of documents of a spreadsheet that are attached to it, and it was an e-mail from Stephen King dated September 17, 2008.

Have you ever seen Exhibit 15?

A. No, I don't recall seeing it.

Q. Who is Stephen King?

A. Steven works at Barclays. He -- and at least now he is in -- he was in that PMTG group.

Q. And it is to C. Spero. Is it your understanding that's Charles Spero?

A. Yeah, that's what it looks like.

Q. Who is Jasen Yang?

A. I don't know.

Q. You will see in the middle of this e-mail, it says, "I am going to have to do the same on the rest of the portfolio. I guess that is Felder, right?" Do you see that?

A. Yes.

Q. Is it your understanding that's referring to you?

A. It looks that way, yes.

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Q. Did any of these people, Stephen King, Charles Spero or Jasen Yang ever contact you about doing any work with the portfolio that is described here?

A. No. Not that I recall.

Q. Do you have an understanding under "BB takes" what's being described here?

A. "BB takes." BB -- well, it says takes and leaves, so I assume it is securities being taken and securities being left.

Q. Were you involved in putting together these numbers that are on Exhibit 15?

A. No.

(Exhibit 16, e-mail dated September 18, 2008 at 12:23 p.m. marked for identification, as of this date.)

Q. The next exhibit, 16, is an e-mail from Gilles Aublin dated September 18, 2008, to Fred Orlan and others, I believe you are on the cc line, with the subject "Asset Transfer Update."

Do you remember receiving this e-mail?

A. I don't recall specifically.

Q. Is that your e-mail address on the cc line?

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A. Yes.

Q. And who is Gilles Aublin?

A. He was in product control for credit.

Q. You will see that in the first of the bullet points, it says, "You will be provided later today the updated final list of assets that will be carried over to the new entity."

Do you see that?

A. Yes.

Q. Were you provided with an updated final list of assets that would be carried over to the new entity?

A. I don't recall.

Q. Do you know what this is referring to?

A. Only just what it says in the e-mail.

Q. Did you receive any list from Mr. Aublin or his team that reflected assets that were carried over to the new entity?

A. I don't recall specifically getting one.

Q. Then you see in the third bullet point it says, "Today it is critical that all positions are marked carefully, as this mark will be the basis of the transfer." Do you see that?

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A. Yes.

Q. Were you involved at all in marking the assets on or about September 18?

A. No.

Q. And did you speak to Mr. Aublin at all about the issues of valuation of the asset transfer?

A. No.

Q. You testified earlier today that you returned the \$25 million back to Lehman.

A. Correct.

Q. Why did you do that?

A. I thought it was the right thing to do. Given what had happened, I felt it was the proper, proper thing to do.

Q. When had you received that amount?

A. I received part in June of '08 and part in September.

Q. In addition to the \$25 million from Lehman, had you been receiving an ongoing salary?

A. I had my normal salary, yes.

Q. And did you return any of the normal salary?

A. No.

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in any of the businesses that you bumped into about whether or not the business was within its risk appetite limits?

A. I do recall Alex Kirk saying -- and I couldn't tell you when, this is going back pre-September, I do recall Alex saying that his business had to get risk appetite lower.

Q. And which business would he have been talking about?

A. This was when he was the co-COO of fixed income. So --

Q. So it was the fixed income division that had to get limits lower?

A. I recall him saying that.

Q. Usage lower or limits lower?

A. Risk appetite usage.

Q. OK. Thank you. I don't have any further questions.

MR. CARDEN: We have been admirably efficient, but I have a few more questions. Won't take long.

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EXAMINATION BY

MR. CARDEN:

Q. The traders who are responsible for certain aspects of the fixed income portfolio are the ones who do the marks every night, correct?

A. Correct.

Q. How many traders, just roughly speaking, were there within the fixed income area in the days when you were the cohead, who would have prepared such marks?

A. Oh, I don't know how many specific trade -- I know there were about 3,000 people in fixed income. And I think that the split was about a third, a third, a third, sales, trading, research, so I would give an estimate without real knowledge specifically of maybe about a thousand.

Q. A lot of people?

A. A significant number.

Q. And those people, when they did their marks for the portfolios for which they were responsible, did they have a responsibility to provide those marks up to an immediate supervisor every day?

Or said another way, how were they

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input into the system?

A. No, the traders input their own marks.

Q. On the evening of Thursday, I know you don't recognize, or pardon me, don't recall having gone forth to get valuations.

A. Right.

Q. But had you done so and just don't remember, who would you have asked to provide the marks for the portions of the portfolio that were provided to you Thursday evening?

A. I would -- if I had to ask that question, I probably would have asked someone like a Gilles in product control, because product control was responsible for month-end variance testing, so they had -- they could get all of the different marks all together in one spot. Each trader would only have their book. So the only place where you could go to get an aggregate list of marks would be out of product control.

Q. That would only be on a once monthly basis, correct? You had to go back to the end of August, or is that done on a --

A. Product control could get all the marks on any given day.

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Q. So I know you, again, you don't remember, I'm just trying to get what the process would have been.

When you're given -- if you were given the sheet that had the hundred largest positions in fixed income on the evening of Thursday or Friday morning, and you had to get fire sale marks for those positions, is it your testimony that you would have gone to Gilles?

MR. STERN: Objection to the form.

A. No. If things had already been marked and I was asked to get what are the marks, I would go to Gilles.

Q. Fair enough.

If you were asked to get fair sale marks for those same positions on late Thursday night or Friday morning, to whom would you have gone to get those fire sale marks?

A. Within credit?

Q. Yes.

A. The people under me in credit would have been Fred Orlan, who ran the high-yield business. Within the investment grade business, it would have been Jason Quinn and Anthony

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that.

Would there be any way that you could have avoided going to each and every one of them in order to make the process more efficient? In other words, is there some one person above all of them to whom you might have gone to say get this done and that they in turn would have gone to the collection of people you described? Or is that person you?

A. Can you repeat the question.

Q. Yeah, I am happy to rephrase the question.

I know you don't have a recollection of this, I am simply trying to determine what you would have done if it in fact happened.

You were asked to give fire sale prices for the securities in Exhibit 2. You have got to find the people who are in a position to do it. You have described to me the people in each of the various asset classes who are in a position to talk to the relevant traders and get those fire sale marks, correct?

A. Correct.

MR. STERN: Objection to the form.

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Wait. Objection to the form, because the question incorporates all kinds of statements.

MR. CARDEN: That's fine. I am happy with the question. You can object to the form.

Q. So the question I have for you now is, is there --

MR. STERN: The point is if you are creating a misleading record, I just can't let that stand. So what exactly are you asking?

MR. CARDEN: We have done beautifully this far. I am perfectly happy with the answer. I am just trying to identify people who are involved. Let's just move on. I am happy to stand by the question. I have reformulated questions in the past when I thought you were correct. I thought you were mistaken about this. I don't really care about this.

Q. What I really want to know, Mr. Felder, is, if you had chosen to do so and were asked to provide fire sale prices for a wide
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collection of positions in the fixed income area, is there some one person you could have called as opposed to contacting all the people that you have described?

A. I could have gone to one person who would have gone to those people. So Mike Gelband would know all of those people, Alex Kirk would know all of those people.

Q. But at the end of the day, what you are saying to me, in order to provide the fire sale prices, you would have had to have gone back to the people that you have identified to get those prices, correct? Somebody would have had to have gone to them?

A. That would be the process I would go through.

Q. That's what I am asking for. OK.

And it is your testimony you have no recollection of having done that on Thursday night or Friday morning?

A. I have no recollection of having done that.

Q. OK, thank you, sir.

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EXAMINATION BY
MS. TAGGART:

Q. I will ask a couple of follow-up questions to this.

When you talk about the traders are the ones who put together marks, do they do that on a routine basis?

A. They mark their books every day.

Q. And what's involved in marking the books every day?

A. For what type of a trader?

Q. It varies from trade to trade? Let me ask this: Where do they put the information on a daily basis, or did they at this time?

A. Whatever the front office system of that asset class is would be where the marks would be put in.

Q. When you say a front office system, are you talking about a computerized database?

A. An application. There were different applications for different products, that would all feed into the middle office or the back office of the firm. So depending on what the product was, whatever system that was used would be the --

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would be -- that is where they would put the prices into.

Q. When you talk about a system, a computerized system?

A. Computerized system.

Q. So every day traders would be entering marks for the securities that they were involved in on some sort of computer system; is that correct?

A. To my knowledge, that -- a computer system was used in the products I knew.

Q. Did you ever personally access on a computer system daily marks?

A. In risk systems, you can see -- you can see the marks of securities.

Q. How do you see them?

A. On the computer screen.

Q. Did the computer screen -- is there a database that you remember, a name of a database where you personally could go and access daily marks?

A. In -- within credit, our main risk system was called ICE, I-C-E. And that consolidated the derivative systems and the cash

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systems.

Q. Did marks ever change from the close of the market on Friday to the opening of the market on Mondays?

A. From the close on a Friday to the open on a Monday?

Q. Yes.

A. I don't think you could do -- I don't think the system would let you -- you can get an end-of-day mark, and then I don't think you could go in and change -- as far as I know, you couldn't go in and change a mark once it was committed for that day until the mark for the next day.

Q. In particular on the weekend of September 19 -- from the close of the market on September 19 to the opening of the market on September 22, would there be any reason for any of the marks from the credit business to change over that weekend?

A. Not that I would be aware of.

Q. OK, that is all.

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EXAMINATION BY

MR. BYMAN:

Q. I apologize. Every time somebody asks a question, somebody else thinks of another question.

When the traders do their marks, and I understand, I think, that process, is there any other group such as the product control group that does an independent analysis of where they think certain assets should be valued?

A. That would be done monthly, and there would be variance reports. I only know this specifically within credit because I hadn't gone through that process in the other asset classes. So within credit, we had a monthly variance meeting with product control to go through any positions that they felt -- they got external data from third parties and they compared the marks to that external data, and then the desk heads would sit down with product control, and then ultimately I would sit down to make sure that the business was properly marked from the product control -- from a -- essentially a third party's perspective.

Q. So I want to make sure that I

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understand the process then. So on a daily basis, the traders would mark the assets that they were responsible for. On a monthly basis, product control would do its own evaluation. To the extent there was a variance, it would escalate to you, and you would decide who was right or whether it was someplace in the middle?

A. No. The product controllers ultimately had the -- you couldn't overrule a product controller because they had the third-party data. So if they said this, this is off, then the book just got marked down by where it was.

If there was a situation where -- if there was a situation where there was other data in the market that the product controllers didn't have, for example, then --

Q. You would reason with them, but you couldn't overrule them?

A. Right. That was my experience within credit.

Q. And so far as you know, is that the same system that other businesses use within Lehman?

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
) Chapter 11
LEHMAN BROTHERS) Case No. 08-13555(JMP)
)
HOLDINGS, INC., et al.,)
)
Debtors.)
-----)

HIGHLY CONFIDENTIAL DEPOSITION OF
DANIEL JOSEPH FLEMING
New York, New York
Friday, August 28, 2009

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 24123

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<p>1 Fleming - Highly Confidential 2 in 1998? 3 A. I reported in to an individual by 4 the name of Robert Murack. 5 Q. And was there a time when that 6 changed and you started to report to someone 7 else or did you report -- 8 A. Yes. Robert left the organization. 9 I was then reporting in to an individual by the 10 name of Kathy Bopp Flynn, who was in charge of 11 cash and collateral management, as well as 12 network management and possibly some other 13 functions. I don't recall. She was a direct 14 report to the treasurer at the time who was 15 Daniel Minerva. Kathy Bopp Flynn moved into a 16 new role at some point after I was reporting in 17 to her. A new individual by the name of Robert 18 van Zwieten was hired. Robert was responsible 19 for global cash management as well as some 20 other functions. Upon Robert -- 21 Q. Go ahead. Finish. 22 A. Upon Robert's departure -- I don't 23 recall exactly when that was, it was probably 24 2005, 2006. 2006. At that time I was named 25 the global head of cash and collateral</p>	<p>1 Fleming - Highly Confidential 2 management reporting in to Ian Lowitt, who at 3 the time was the treasurer. 4 Q. So if I can just step back to 5 clarify, in 2001, 2002 you became the U.S. head 6 of cash and collateral management and then in 7 2006 you became the global head of cash and 8 collateral management; is that correct? 9 A. That sounds approximately correct, 10 yes. 11 Q. And at the time that you were the 12 U.S. head of cash and collateral management, 13 were you reporting to the then global head of 14 cash and collateral management or directly to 15 the treasurer? 16 MR. C. GREEN: Object to form. 17 You can answer. Go right ahead. 18 A. There was a change in organizational 19 structure during my time at Lehman Brothers. 20 When I first joined, there was no global head. 21 Each region ran their own treasury group. At 22 some point, I don't exactly remember when that 23 was, they created global heads for each 24 function within treasury. 25 Q. So to clarify, when you were going</p>
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<p>1 Fleming - Highly Confidential 2 through the people you reported to prior to 3 becoming global head, Kathy Bopp Flynn, at the 4 time that you reported to her, what was her 5 title? 6 A. She was senior vice president. That 7 was her official title. 8 Q. Let's move on. Let's go back to you 9 became global head of cash and collateral 10 management in 2006. What were your duties as 11 global head? 12 A. Most of my time was spent focusing 13 on the U.S. operations of Lehman Brothers. I 14 did have global responsibility. In that 15 capacity I was responsible for overseeing 16 strategic direction and objectives of the team, 17 but each of my directs -- I had a direct in 18 Europe and a direct in Asia -- reported in to 19 the treasurer of those respective regions and 20 the day-to-day operations were managed within 21 the region. 22 Q. And did you have direct reports in 23 the U.S.? 24 A. Yes, I did. 25 Q. Could you name those individuals?</p>	<p>1 Fleming - Highly Confidential 2 MR. C. GREEN: I'm sorry, at the 3 time he became global head or throughout 4 the period of time that he was global head? 5 Q. Why don't we say at the time you 6 became global head, how many direct reports did 7 you have? 8 A. I don't really recall. It could 9 have been three. I don't remember exactly what 10 it was. 11 Q. Did it change substantially over 12 time? 13 A. I think towards the end there were 14 two direct reports in the U.S. 15 Q. And at the end who were those two 16 direct reports? 17 A. Craig Jones and Mandeep Seekond. 18 Q. Could you spell the last name? 19 A. S-E-E-K-O-N-D. 20 Q. Were you and your two direct 21 reports, Craig Jones and Mandeep Seekond, the 22 only members of the U.S. cash and collateral 23 management team? 24 A. No. 25 Q. Who else would have comprised</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 Joseph Bellingeri. That does not constitute</p> <p>3 the whole repo desk. There were many other</p> <p>4 things that the repo desk was doing that we</p> <p>5 were not liaising with them on, so those two</p> <p>6 individuals were our primary contacts and those</p> <p>7 two individuals were the ones that were</p> <p>8 executing the bulk of Lehman Brothers, Inc.'s</p> <p>9 secured financing.</p> <p>10 Q. And were Servidio and Bellingeri the</p> <p>11 individuals to whom your group would send</p> <p>12 reports?</p> <p>13 MR. C. GREEN: Object to form.</p> <p>14 A. The information that we provided, I</p> <p>15 believe, went to a broader distribution than</p> <p>16 just those two individuals.</p> <p>17 Q. If you could take me through</p> <p>18 starting September 12th, 2008, the weekend</p> <p>19 before Lehman Brothers Holdings, Inc. filed for</p> <p>20 bankruptcy, what you were doing that weekend</p> <p>21 before the filing.</p> <p>22 MR. C. GREEN: Object to form.</p> <p>23 A. The weekend prior to bankruptcy, the</p> <p>24 holding company bankruptcy?</p> <p>25 Q. Yes.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: This would be the</p> <p>3 weekend of the 13th and 14th?</p> <p>4 MS. CARRERO: Yes, September 13th</p> <p>5 and 14th.</p> <p>6 A. I don't recall. I don't remember if</p> <p>7 I was working or not working.</p> <p>8 Q. Do you have any recollection of</p> <p>9 being involved in any sort of negotiations</p> <p>10 either directly or indirectly for the sale of</p> <p>11 any part of Lehman that weekend?</p> <p>12 A. No.</p> <p>13 Q. Were you ever involved in any</p> <p>14 negotiations for the sale of any part of Lehman</p> <p>15 or its assets?</p> <p>16 A. No.</p> <p>17 Q. Do you recall generally what you</p> <p>18 were doing on September 15th, the date that</p> <p>19 Lehman Brothers Holding had filed for</p> <p>20 bankruptcy?</p> <p>21 A. That would be Monday?</p> <p>22 Q. That would be Monday, September</p> <p>23 15th.</p> <p>24 A. I mean, generally speaking, we were</p> <p>25 trying to figure out how we were going to</p>
Page 36	Page 37
<p>1 Fleming - Highly Confidential</p> <p>2 continue to run LBI.</p> <p>3 Q. And what decisions were made in</p> <p>4 terms of how to continue running LBI?</p> <p>5 MR. C. GREEN: Object to form. What</p> <p>6 decisions were made by him?</p> <p>7 Q. Do you have any recollection of what</p> <p>8 decisions were made in terms of running LBI?</p> <p>9 MR. C. GREEN: By whom?</p> <p>10 Q. On the 15th what's your</p> <p>11 recollection -- you had testified that on the</p> <p>12 15th what was going on was conversations in</p> <p>13 terms of how to run LBI. Could you expand upon</p> <p>14 that, please.</p> <p>15 MR. C. GREEN: Object to form.</p> <p>16 A. Okay. So the thought that -- Lehman</p> <p>17 Brothers was an integrated organization,</p> <p>18 meaning that legal entities were not simply</p> <p>19 stand-alone entities, that it was an integrated</p> <p>20 organization. Systems were integrated,</p> <p>21 processes were integrated. The notion that,</p> <p>22 you know, the 15th of September that we can say</p> <p>23 that, you know, the holding company is bankrupt</p> <p>24 and the broker/dealer is not and people just go</p> <p>25 about their day is just not a reality, so</p>	<p>1 Fleming - Highly Confidential</p> <p>2 trying to shut down the holding company and its</p> <p>3 subsidiaries, which, quite frankly, at the time</p> <p>4 there was ambiguity around which legal entities</p> <p>5 were in bankruptcy and which ones were not, and</p> <p>6 trying to run LBI required a tremendous amount</p> <p>7 of coordination and effort between operations,</p> <p>8 technology, finance, treasury, right, to</p> <p>9 effectively shut down the pipes and plumbing as</p> <p>10 we could for that portion of the business that</p> <p>11 we believed was in bankruptcy while keeping</p> <p>12 within that same grid the portion that we</p> <p>13 thought was still a functioning entity open for</p> <p>14 business and being able to satisfy the</p> <p>15 obligations that came about on Monday morning.</p> <p>16 We had issued checks. We had -- there were</p> <p>17 debit cards clients were using. The banks are</p> <p>18 coming to us Monday morning saying, you know,</p> <p>19 how are you going to pay for this, how are you</p> <p>20 going to do this, how are you going to do that.</p> <p>21 So that was what I was spending the bulk of my</p> <p>22 time on, in addition to fielding questions from</p> <p>23 many, many different people internally and</p> <p>24 externally as it related to our ability to</p> <p>25 remit payment or fund for certain types of</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 Q. And could you explain to me the</p> <p>3 difference between the two OCC margin accounts?</p> <p>4 A. I'm not an expert in the margin. I</p> <p>5 didn't control the OCC processing. My</p> <p>6 understanding is that the house represents the</p> <p>7 proprietary positions and that the customer</p> <p>8 represents customer positions or the margin</p> <p>9 associated with each.</p> <p>10 Q. And would Lehman funds be used to</p> <p>11 post margin to the customer margin accounts at</p> <p>12 OCC?</p> <p>13 MR. C. GREEN: Object to the form of</p> <p>14 the question.</p> <p>15 Do you have the question in mind?</p> <p>16 THE WITNESS: Am I supposed to be</p> <p>17 answering the question?</p> <p>18 MR. C. GREEN: Do you want to read</p> <p>19 back the question.</p> <p>20 (Record read.)</p> <p>21 A. We would use firm assets to pledge</p> <p>22 to the customer requirement. There is no</p> <p>23 correlation between the customer margin and the</p> <p>24 margin that's actually collected from clients,</p> <p>25 because the margin treatment that we give</p>	<p>1 Fleming - Highly Confidential</p> <p>2 clients, such as New York Stock Exchange</p> <p>3 portfolio margin treatment, allows for the</p> <p>4 netting of options and other types of</p> <p>5 instruments that are housed within the client's</p> <p>6 account whereby the OCC is only looking at the</p> <p>7 option position, so there never is a</p> <p>8 correlation, so you could never locate the</p> <p>9 client asset applicable to a margin -- I</p> <p>10 shouldn't say never. We couldn't. We didn't.</p> <p>11 So it was firm assets that were pledged to the</p> <p>12 OCC.</p> <p>13 Q. And if you would turn your attention</p> <p>14 to column F, which is entitled IM Excess</p> <p>15 Deficit, could you explain for me what column F</p> <p>16 is tracking?</p> <p>17 A. IM stands for initial margin, which</p> <p>18 is determined by the exchange.</p> <p>19 Q. If there is an excess under IM</p> <p>20 excess deficit, is the excess available to be</p> <p>21 returned to Lehman?</p> <p>22 A. I believe so.</p> <p>23 Q. If you turn your attention to</p> <p>24 column H of Exhibit 304B, the column is headed</p> <p>25 Exchange Margin Available.</p>
Page 136	Page 137
<p>1 Fleming - Highly Confidential</p> <p>2 Do you have any understanding as to</p> <p>3 the meaning of the numbers in that column?</p> <p>4 A. I don't know.</p> <p>5 Q. And do you know if the excess margin</p> <p>6 in the OCC customer and house accounts, which</p> <p>7 can be found in lines 58, 59 and 60, were</p> <p>8 growing on the 16th as opposed to the numbers</p> <p>9 on the 15th if you turn to the fourth page of</p> <p>10 the attachment and look at the same lines 58,</p> <p>11 59 and 60?</p> <p>12 MR. C. GREEN: Object to the form of</p> <p>13 the question.</p> <p>14 Q. Because of any particular event?</p> <p>15 A. I'm not sure I'm looking at the</p> <p>16 right thing. So the second --</p> <p>17 Q. So page 2 of the attachment, lines</p> <p>18 58 through 60, and then page 4 of the</p> <p>19 attachment to Exhibit 304B, lines 58 through</p> <p>20 60.</p> <p>21 A. And which columns?</p> <p>22 Q. I'm sorry, column K on page 4.</p> <p>23 A. So column F is the equivalent of</p> <p>24 column K? Is that what --</p> <p>25 MS. CARRERO: Off the record.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 (Discussion off the record.)</p> <p>3 MS. CARRERO: Withdraw the pending</p> <p>4 question.</p> <p>5 BY MS. CARRERO:</p> <p>6 Q. Mr. Fleming, are you aware of excess</p> <p>7 margin growing in the margin accounts at OCC</p> <p>8 over the week of September 15th?</p> <p>9 MR. C. GREEN: Object to the form of</p> <p>10 the question.</p> <p>11 A. I would say that I was -- nothing</p> <p>12 stood out or nothing was brought to my</p> <p>13 attention as it related to issues with -- let</p> <p>14 me rephrase that. I was not aware of issues</p> <p>15 with a growing amount of excess in the</p> <p>16 accounts, so I think it's fair to say that</p> <p>17 there was always some amount of excess in the</p> <p>18 accounts. I also think it's fair to say that</p> <p>19 there was a tremendous amount happening during</p> <p>20 that time frame, not only as it relates to, you</p> <p>21 know, positions that we were trading in or</p> <p>22 clients were trading in, but the market in</p> <p>23 general. So the volatility of, you know, the</p> <p>24 positions, not the positions but the value of</p> <p>25 those positions, was very, very significant, so</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 the fact that we had excess there doesn't come</p> <p>3 as a surprise.</p> <p>4 Q. If there is excess in the account,</p> <p>5 does that suggest any volatility in the market</p> <p>6 was in Lehman's favor in aggregate?</p> <p>7 MR. C. GREEN: Object to the form.</p> <p>8 A. I wouldn't draw any conclusion like</p> <p>9 that. All I am saying is there was, you know,</p> <p>10 unprecedented volatility in the marketplace.</p> <p>11 Q. Could you explain to me how the</p> <p>12 margin accounts at an exchange like OCC work in</p> <p>13 tandem with the position accounts?</p> <p>14 MR. C. GREEN: Object to the form.</p> <p>15 A. I cannot describe to you the</p> <p>16 calculation of margin at the exchanges that</p> <p>17 they perform. I don't know what that</p> <p>18 calculation consists of.</p> <p>19 Q. Could you explain to me how the</p> <p>20 margin account is related to any account</p> <p>21 holding exchange-traded derivatives?</p> <p>22 MR. C. GREEN: Object to the form.</p> <p>23 A. There is a margin calculation based</p> <p>24 on the positions and then there is a designated</p> <p>25 account whereby qualified assets need to be</p>	<p>1 Fleming - Highly Confidential</p> <p>2 deposited to satisfy the margin requirement.</p> <p>3 Q. So for the customer margin account</p> <p>4 at OCC there would be a related account holding</p> <p>5 any exchange-traded derivatives; is that</p> <p>6 accurate?</p> <p>7 MR. C. GREEN: Object to the form.</p> <p>8 A. There would be customer trades that</p> <p>9 correspond to the customer margin.</p> <p>10 (Exhibit 305B, e-mail dated</p> <p>11 September 23, 2008, Bates stamped</p> <p>12 BCI-EX-(S)-000191987 through</p> <p>13 BCI-EX-(S)-000191194, marked for</p> <p>14 identification.)</p> <p>15 Q. Mr. Fleming, you have before you</p> <p>16 what's been marked Exhibit 305B.</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what this document is?</p> <p>19 A. This appears to be a statement from</p> <p>20 the OCC.</p> <p>21 Q. Do you recall receiving these</p> <p>22 statements on September 23rd from Susie Chen?</p> <p>23 A. Not specifically, but it shows here</p> <p>24 that -- well, there is a memo here. I don't</p> <p>25 recall actually reviewing or doing anything</p>
Page 140	Page 141
<p>1 Fleming - Highly Confidential</p> <p>2 with these statements.</p> <p>3 Q. Do you recall attending a meeting</p> <p>4 regarding OCC margin around September 23rd?</p> <p>5 A. I don't. There were a lot of</p> <p>6 meetings happening at the time and I didn't --</p> <p>7 I wasn't actively managing the day-to-day</p> <p>8 business, the detail, so it's likely that</p> <p>9 someone else would have been attending those</p> <p>10 meetings who was more familiar with the</p> <p>11 details.</p> <p>12 Q. Do you have any idea of who would</p> <p>13 have been attending those meetings?</p> <p>14 MR. C. GREEN: Object to the form of</p> <p>15 the question. When you say "those</p> <p>16 meetings," you mean this particular meeting</p> <p>17 you are referring to or --</p> <p>18 MS. CARRERO: Mr. Fleming said that</p> <p>19 it was likely that somebody else would have</p> <p>20 been attending those meetings who was more</p> <p>21 familiar with the details. I am asking him</p> <p>22 to clarify who those individuals might have</p> <p>23 been.</p> <p>24 MR. C. GREEN: He said there were a</p> <p>25 lot of meetings.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Particularly with respect to OCC</p> <p>3 margin, who, if not you, would have attended</p> <p>4 any meetings taking place on the issue?</p> <p>5 A. It's conceivable that Craig Jones</p> <p>6 may have attended the meeting you are</p> <p>7 referencing.</p> <p>8 Q. And at this point on September 23rd</p> <p>9 are you employed by Lehman or are you employed</p> <p>10 by Barclays at this point?</p> <p>11 MR. C. GREEN: Object to the form.</p> <p>12 A. I don't know. I don't know.</p> <p>13 Q. Do you recall if at any point during</p> <p>14 the week of September 15 you received an offer</p> <p>15 of employment from Barclays?</p> <p>16 A. I recall receiving an offer of</p> <p>17 employment. I don't recall what day it was</p> <p>18 that that occurred.</p> <p>19 Q. Do you recall how you received that</p> <p>20 offer of employment?</p> <p>21 A. I received a phone call from</p> <p>22 Mr. Lowitt advising me that Barclays would like</p> <p>23 to hire me.</p> <p>24 Q. And do you recall if you received a</p> <p>25 written offer following Mr. Lowitt's call?</p>

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

5 In re:)
6 LEHMAN BROTHERS) Chapter 11
7 HOLDINGS, INC., et al.,) Case No. 08-13555(JMP)
8 Debtors.)
-----)

9
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14
15 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
16 JAMES FOGARTY
17 New York, New York
18 Friday, January 15, 2010
19
20
21
22

23 Reported by:
24 KRISTIN KOCH, RPR, RMR, CRR, CLR
25 JOB NO. 27091

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1 THE VIDEOGRAPHER: This is the start
2 of tape number 1 of the videotaped
3 deposition of James Fogarty in the matter
4 in re Lehman.

5 Today's date is January 15th, 2010
6 at approximately 9:36 a.m.

7 Will the court reporter please swear
8 in the witness.

9 JAMES FOGARTY,
10 called as a witness, having been duly sworn
11 by a Notary Public, was examined and
12 testified as follows:

13 EXAMINATION BY
14 MR. THOMAS:

15 Q. Good morning, Mr. Fogarty.

16 A. Good morning.

17 Q. Would you please state your full
18 name and address for the record, please.

19 A. James Fogarty, and I am at 14 Old
20 Roaring Brook Road, Mount Kisco, New York,
21 10549.

22 Q. And can you please -- have you been
23 deposed before?

24 A. Once.

1 Fogarty - Highly Confidential

2 Q. So you are familiar with how this
3 process works?

4 A. Very, very pleasant experience.

5 Q. Okay. If at any point you are not
6 sure what I am asking, please ask me to
7 rephrase the question. I will be happy to try.

8 Could you please briefly describe
9 your employment history.

10 A. I was with Alvarez and -- I am with
11 Charming Shoppes now. I am the CEO at Charming
12 Shoppes. I started there April of this year.
13 And prior to that I was with Alvarez & Marsal
14 for over 15 years, and prior to that I was with
15 KPMG Peat Marwick for six years, five years,
16 something like that.

17 Q. And can you please describe your
18 educational background.

19 A. Bachelor of arts, Williams College,
20 and MBA from Stern School and a master's in
21 accounting from The Stern School.

22 Q. What did you do for Alvarez?

23 A. I was, the back half of my career
24 there, mostly an interim manager in distress
25 situations.

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1 Fogarty - Highly Confidential

2 Q. And can you describe in a little
3 more detail what duties and responsibilities
4 you had in that position.

5 A. So I was -- I was really on sort of
6 a handful of cases over that period of time. I
7 was the CFO of Warnaco Group for about two and
8 a half years. I was the CFO then at Levi
9 Strauss for about two and a half years. And
10 then I was the CEO of American Italian Pasta
11 Company, again, about two years, give or take,
12 something like that. And then after that I was
13 at Lehman Brothers as the chief operating
14 officer post filing.

15 Q. So Alvarez & Marsal would come in to
16 distressed companies and you would then
17 essentially function as the company's
18 management?

19 A. That's correct.

20 Q. And when was the first time you had
21 any involvement or connection with the
22 Lehman/Barclays sale transaction that occurred
23 in September of 2008?

24 MR. TAMBE: Objection to the form of
25 the question.

1 Fogarty - Highly Confidential

2 You can answer.

3 THE WITNESS: Say that again. I
4 missed --

5 MR. TAMBE: I just object to the
6 form of the question. You can answer the
7 question.

8 THE WITNESS: I can answer. Okay.

9 A. I was -- well, it's probably
10 easier -- I guess the 15th of September was the
11 date that Lehman filed and our firm became
12 involved, basically, that day or we got a call
13 the night before, Brian Marsal got a call, and
14 we started that day over at the offices and
15 there was -- you know, the sort of first I had
16 heard of Barclays and Lehman was probably that
17 day, that there was continuing work on trying
18 to put a transaction together.

19 Q. And can you describe your first
20 involvement in the working in connection with
21 Lehman during that assignment?

22 I mean, did you start working on the
23 15th or the 16th? Can you just describe a
24 little what you did that week of the 15th.

25 A. So the first week it was myself with

Page 10	Page 11
<p>1 Fogarty - Highly Confidential</p> <p>2 a few others; Brian Marsal, John Suckow, David</p> <p>3 Coles, myself and a couple others, and we spent</p> <p>4 a lot of the first week -- we had some</p> <p>5 connection with the management team, but,</p> <p>6 frankly, the management team was connected in</p> <p>7 working on the transaction, so there wasn't as</p> <p>8 much connection, frankly, as we are used to in</p> <p>9 the first week, but we had a number of</p> <p>10 conversations with management over that first</p> <p>11 week. Really our main goal in the first week</p> <p>12 was understanding the liquidity of the business</p> <p>13 and understanding -- trying to get our arms</p> <p>14 around the business.</p> <p>15 Q. And can you describe in a little</p> <p>16 more detail what you mean by the liquidity of</p> <p>17 the business?</p> <p>18 A. Well, the company had, of course,</p> <p>19 just filed and we needed to, you know,</p> <p>20 understand the basics of how the business was</p> <p>21 going to operate in Chapter 11 and whether</p> <p>22 there was going to be, you know, liquidity to</p> <p>23 run the business during that time frame.</p> <p>24 Q. On starting with that Monday,</p> <p>25 September 15th, did you physically go over to</p>	<p>1 Fogarty - Highly Confidential</p> <p>2 Lehman's offices?</p> <p>3 A. Yes.</p> <p>4 Q. So on that Monday can you describe</p> <p>5 what you did when you went over to their</p> <p>6 offices?</p> <p>7 A. We went to the office, went to</p> <p>8 connect with Brian Marsal, and went in a</p> <p>9 conference room.</p> <p>10 Q. What did you do in the conference</p> <p>11 room?</p> <p>12 A. We then had a meeting with -- I</p> <p>13 think the first meeting we had we met with Tom</p> <p>14 Russo, we met with Steve Berkenfeld. We</p> <p>15 had a -- I can't remember all of the -- we had</p> <p>16 a couple of connection meetings initially on</p> <p>17 those first couple of days.</p> <p>18 MR. THOMAS: Let me go ahead and</p> <p>19 show you a document we will mark as 561-B.</p> <p>20 (Exhibit 561-B, e-mail dated</p> <p>21 September 19, 2008, marked for</p> <p>22 identification.)</p> <p>23 MR. TAMBE: Just before you get</p> <p>24 started --</p> <p>25 MR. THOMAS: We are looking for a</p>
Page 12	Page 13
<p>1 Fogarty - Highly Confidential</p> <p>2 production copy. If I have it, we can</p> <p>3 introduce that also.</p> <p>4 MR. TAMBE: Yes, or just read it</p> <p>5 into the record later on just what the</p> <p>6 Bates number is, but there appears to be a</p> <p>7 Bates number that is cut off.</p> <p>8 MR. THOMAS: Sure.</p> <p>9 Q. This is an e-mail which you are in</p> <p>10 the e-mail chain. It's -- the initial e-mail</p> <p>11 is an e-mail from David Coles to Kristie Wong</p> <p>12 at Lehman dated September 18th.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. I recall it.</p> <p>17 Q. In the e-mail -- and who is David</p> <p>18 Coles?</p> <p>19 A. David Coles is my partner,</p> <p>20 another -- well, former partner, another</p> <p>21 managing director at Alvarez & Marsal. He is</p> <p>22 one of the fellows I mentioned earlier.</p> <p>23 Q. What was his role with respect to</p> <p>24 Lehman Brothers at this time?</p> <p>25 A. David became the chief financial</p>	<p>1 Fogarty - Highly Confidential</p> <p>2 officer and his role was to understand the</p> <p>3 finances of the company and particularly, you</p> <p>4 know, focus on liquidity measures and so forth,</p> <p>5 and my focus was more of the operating side, to</p> <p>6 make sure that we could function in the back</p> <p>7 end of the business and have people in place</p> <p>8 and so forth over time. I mean, initially we</p> <p>9 are all working things together, but that was</p> <p>10 how the duties delineated over time.</p> <p>11 Q. In the e-mail from David to Kristie</p> <p>12 Wong at Lehman, it says: "Some colleagues and</p> <p>13 I met with Martin Kelly on Tuesday."</p> <p>14 Do you recall meeting with Martin</p> <p>15 Kelly on Tuesday of that week, it would be</p> <p>16 September 16th?</p> <p>17 A. I do not.</p> <p>18 Q. Do you know if you were a part of</p> <p>19 that meeting?</p> <p>20 A. I don't recall. I know David was</p> <p>21 spending time with Martin Kelly. I may have</p> <p>22 met Martin once in the hallway, but I don't</p> <p>23 believe I was ever spending quality time with</p> <p>24 Martin.</p> <p>25 Q. The e-mail goes on to say that they</p>

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2 discussed the consolidated balance sheet and
3 the likely post Barcap sale BS.

4 Do you see that?

5 A. I see that.

6 Q. What do you understand the post
7 Barcap sale BS to refer to?

8 MR. TAMBE: Objection to the form of
9 the question.

10 You can answer.

11 MR. THOMAS: Some of these
12 objections he will state an objection just
13 to preserve something about the question
14 and but then you can go ahead and answer
15 unless he instructs you not to.

16 THE WITNESS: Okay.

17 A. Post Barcap sale BS presumably means
18 post Barcap -- post sale to Barclays capital
19 balance sheet.

20 Q. Was that something you guys were
21 trying to work up, Alvarez & Marsal, at this
22 time?

23 A. I was not spending time on it.
24 David was.

25 Q. And do you know why Alvarez folks

1 Fogarty - Highly Confidential
2 were trying to work up this post Barcap sale
3 balance sheet?

4 A. Well, we were trying to understand
5 what assets will be our responsibility, in
6 other words, what assets will be left behind,
7 and start to think about what we need to do to
8 manage that process of optimizing the answer
9 for our creditors.

10 Q. Let me go ahead and show you a
11 document which has been previously marked as
12 Exhibit 485.

13 (Document review.)

14 Q. Do you recognize this as an e-mail
15 from you to quite a few people at Alvarez --

16 A. Yes.

17 Q. -- dated September 20th, 2008
18 concerning the deal status?

19 A. Yes.

20 Q. And which deal is that referring to?

21 A. Well, let me -- let me read it here.

22 (Document review.)

23 A. Okay. I read it. Sorry. I missed
24 the question.

25 Q. Sure. Is the deal being referred to

1 Fogarty - Highly Confidential
2 here the sale transaction between Lehman and
3 Barclays?

4 A. Yes.

5 Q. In the first line you write: "Bill
6 Gordon is point on the TSA negotiation. The
7 deal is not 'paper closed' and the TSA has not
8 been agreed to yet."

9 When you are referring to the deal
10 that is not paper closed, are you referring to
11 the Barclays sale transaction?

12 A. Correct.

13 Q. And what did you mean by it is not
14 paper closed?

15 A. Not closed. In other words, it's a
16 period of time between -- well, it hasn't
17 closed yet. I can't remember exactly where
18 it's between.

19 Q. By saying it hasn't paper closed --

20 A. It's not closed.

21 Q. Is it your understanding that
22 agreement has been reached, but they haven't
23 finalized the documents and executed them?

24 MR. TAMBE: Object to the form of
25 the question.

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2 A. It's just not closed, so, you know,
3 when a deal is not yet closed, it's still --
4 it's still --

5 Q. Right. I am asking you, you use the
6 term "hasn't paper closed," which is it fair to
7 draw from that that there is an agreement, but
8 it just -- they haven't finalized the papers?

9 MR. TAMBE: Object to the form of
10 the question.

11 A. There was an evolving agreement,
12 because there were -- again, I was not -- my
13 job was not to understand what was going on. I
14 wasn't part of that negotiating process. My
15 job was to understand for the estate how we
16 were going to get services for the estate after
17 it closed. So what I am referring to, the TSA
18 is the Transition Service Agreement where my
19 focus was.

20 Q. I understand. But when you refer to
21 paper closed, does that reflect your
22 understanding that by this point in time,
23 Saturday morning, September 20th, essentially
24 agreement had been reached, but it hadn't been
25 reduced to writing and the documents hadn't

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2 been executed yet?

3 MR. TAMBE: Object to the form of
4 the question. Asked and answered a number
5 of times now.

6 A. It hadn't closed as of this time, so
7 there were still things being worked on.

8 Q. So when you wrote --

9 A. In other words, the TSA was a
10 critical part of the process as well.

11 Q. And so when you wrote "paper
12 closed," you really just meant closed?

13 A. I mean closed.

14 Q. Not paper closed. Okay.

15 What did you do to prepare for
16 today's deposition?

17 A. I didn't prepare.

18 Q. Did you meet with anyone in
19 connection with it?

20 A. I met with counsel.

21 Q. And who is your counsel?

22 A. Well, the -- I met with Jones Day.

23 Q. Is Jones Day representing you here
24 today?

25 A. Correct.

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2 Q. Did you meet with anyone else
3 concerning the deposition?

4 A. No.

5 Q. Did you discuss the deposition with
6 anyone?

7 A. No.

8 Q. Is it fair to say --

9 A. Can I -- I -- in addition to Jones
10 Day, I was called about the deposition by Phil
11 Kruse, my partner at Alvarez & Marsal,
12 basically to just tell me to expect a call from
13 Jones Day.

14 Q. Okay. There was no substantive
15 discussion --

16 A. No.

17 Q. -- about any issues involved in this
18 case or the deal?

19 A. Other than at a generic level that
20 the dispute was continuing. Other than sort of
21 at a generic level. We didn't get into any
22 details.

23 Q. And how did he describe the dispute
24 to you?

25 A. Just from a public standpoint in

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2 terms of -- I forget the phrase -- the words he
3 would have used, but from a public standpoint
4 that XYZ motions had been filed back and forth.
5 That's about all I can recall.

6 Q. And did he describe the substance of
7 those motions?

8 A. No.

9 Q. Have you ever reviewed those
10 motions?

11 A. I have not.

12 Q. Is it fair to say that you were at
13 least following the deal the week of September
14 15th?

15 MR. TAMBE: Object to the form of
16 the question.

17 A. Yes. And you can see following it
18 even in the press, because...

19 Q. And about midway down it says:
20 "Interesting details from this and other
21 reports."

22 Can you describe where you were
23 getting your information about the deal?

24 And if I say "deal," I am referring
25 to the Lehman/Barcays sale transaction.

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2 A. We were having a very difficult time
3 following what was going on and we were working
4 very hard to understand it, again, from a
5 perspective of understanding how to have a
6 control process around what was going to be
7 left in the estate and how to manage what was
8 going to be left in the estate. So we were
9 trying to get ahead of it and it was very
10 difficult to understand what was going on.

11 Q. And but you were trying to?

12 A. Our firm was -- yes, we were trying
13 to for purposes of understanding -- we were not
14 asked to be involved other than for purposes of
15 understanding what was left for our creditors
16 and how we would prepare for managing those
17 assets.

18 Q. You wanted to understand what assets
19 and liabilities were going over to Barclays and
20 what were staying with Lehman; correct?

21 A. We wanted to understand the latter
22 and part of understanding the latter is
23 understanding the former.

24 Q. Can I take that as a yes?

25 A. Yes.

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Q. Okay. And that would be important in developing the post Barclays balance sheet as well; correct?

A. I wasn't thinking about it from a development of a post Barclays balance sheet. I was thinking about it from the standpoint of what as assets were we going to have to manage.

Q. When you refer here to this and other reports that you seem to be drawing information from, can you describe what reports those are? For example, were you speaking with someone, were you reading materials, attending hearings?

A. I think the other report I'm refer -- or this report I'm referring to is this -- I can't recall, but I think it's this link here that's on the second page from my colleague, Robert Hershan.

Q. The Bloomberg summary?

A. I believe, but, again, I can't recall exactly what I was thinking about at the time.

Q. So you were reading about the deal in the press, for instance?

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A. Right.

Q. Were you also getting -- speaking with anyone directly involved in the deal?

A. September 20th. No. Other -- well, let me -- Steve Berkenfeld around just how, you know, sort of how is the deal going kind of a thing as opposed to -- again, I wasn't intimate to any of the details of what was transpiring and I was more interested in understanding whether it was still happening and timing so that we could, again, be prepared for the assets that we would need to manage for the estate.

Q. Well, you are reporting a number of details to your colleagues; correct?

MR. TAMBE: Object to the form of the question.

A. I'm recapping a number of details that were -- that were referenced in the press.

Q. At the bottom of this page, the last bullet point, you write: "Well said - Daniel Golden of Akin Gump," quoting him to say "we believe this was a flawed sale process. It benefits Barclays and the federal government,

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but not the creditors of this estate." Do you see that?

A. I see that.

Q. Were you expecting an opinion that this was a flawed sale process?

A. Say that again. Was I expecting --

Q. Were you expressing the opinion to your colleagues that this was a flawed sales process?

A. I think it meant it was an interesting comment, my phrase, "well said," interesting comment about the process -- the accelerated process of the sale transaction.

Q. Did you believe it was a flawed sales process?

MR. TAMBE: Object to the form of the question.

A. I didn't know enough about the details.

Q. Did you -- were you aware after the sale hearing on Friday night that the parties continued to work on finalizing the sale documents over the weekend?

A. Yes.

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Q. Did you keep yourself apprised of those final document efforts?

MR. TAMBE: Object to the form of the question.

A. I was staying apprised of the Transition Service Agreement negotiation through my team. Bill Gordon in particular was working on that piece for me.

Q. And how were you staying apprised of --

A. E-mails, telephone.

Q. With whom?

A. Bill Gordon.

Q. Do you know how he was staying apprised of the deal?

A. He was, again, physically on site, working on the transition -- there was a team working on the Transition Services Agreement and they were physically on site working on it. I can't remember what law firm.

Q. Was he at Weil Gotshal the weekend, that Saturday and Sunday, when the deal papers were being finalized?

A. I believe -- I believe they were at

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Weil. I believe so.

Q. Was anyone else from Alvarez over at Weil?

A. I don't think so. I don't recall, but I don't think so.

Q. Let me go ahead and show you a document previously marked as 487.
(Document review.)

Q. Do you recognize this as an e-mail from yourself dated September 22nd, 2008?

A. Are you asking me about both of these things? Just so I understand what I am referring to.

Q. Let me see that.

A. (Handing.)

Q. No.

A. Okay.

MR. TAMBE: Put 488 away? Are you going to ask about -- there is a 488 attached.

MR. THOMAS: Just go ahead and take that. It must have just got stapled in the production process.

A. So yes, I am familiar with this.

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Q. Let me just start over again.

On document 487 do you recognize that as an e-mail from yourself dated September 22nd, 2008?

A. Yes.

Q. And there is a couple of back and forth e-mails here involving you.

John Suckow, can you tell me what his role was?

A. I am trying -- I don't recall John's title, but, again, John, David Coles and I were working for Brian on the matter, on Lehman, the Lehman matter.

Q. And were you trying to keep some of your colleagues up to date about the final discussions over the weekend at Weil concerning the transaction?

A. Yes.

Q. And at the bottom it says: "The M&A deal was that Barclays was getting about 47 billion in trading assets." Do you see that?

A. Yes.

Q. Do you know where you got that information from?

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A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices.

Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays."

Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction?

MR. TAMBE: Object to the form of the question.

A. I don't know.

Q. Let me go ahead and ask you to look at 488 now.

(Document review.)

A. Okay.

Q. Do you recognize this as an e-mail to a number of your colleagues dated September 22nd, 2008?

A. Yes.

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Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process?

A. Yes. I am keeping, yes, Brian and others updated.

Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time?

MR. TAMBE: Objection.

Q. Strike that.

Is that Greenwich mean time there?
Strike that.

Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil?

A. We are very concerned about the -- making sure that the TSA goes as well as it can so that we can have -- the TSA meaning the Transition Services Agreement, so that we can, you know, have an effective process to manage the remaining assets, and we are concerned about timing of communication of the

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transaction should it close.

Q. The last sentence you write:
"Robert, let's continue to hold back
communication until we get the TSA closure."

What did you mean by "continue to
hold back communication"?

A. I can't recall specifically
what the -- but there was an intent to
communicate to the employees of the estate or
Lehman in conjunction with this transaction.

Q. Is that an actual recollection that
you have that that's what you meant by this,
"let's continue to hold back communication" was
hold back communication with the employees of
Lehman?

A. Absolutely, yes.

Q. That's your recollection, you are
not speculating, you recall that's what you
meant?

A. Yes, because Robert Hershan, his
responsibility for me was human resources and
communication, so that -- well -- I don't
have -- let me say I don't have a direct
recollection of the writing of the e-mail, but

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that is my -- yeah, that's my interpretation of
it based on the fact that Robert was working
for me on communication, employee
communication.

MR. THOMAS: Let me show you a
document that we will mark as 562-B.

(Exhibit 562-B, e-mail dated
9/27/2008, Bates stamped WGM-LEHMAN-E
00000812 through WGM-LEHMAN-E 00000815,
marked for identification.)

Q. If you would like, please go ahead
and take a moment to read through this e-mail
chain.

(Document review.)

A. Okay.

Q. Do you recognize this as an e-mail
chain that you were involved with on September
27th, 2008?

A. Yes.

Q. And if you look at I guess the
second oldest in time e-mail, the earliest
e-mail appears to be an e-mail from Weil to
yourself on Friday, September 26th. Do you see
that?

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A. Yes.

Q. And then the next earliest in time
is an e-mail from yourself to quite a number of
people at both Alvarez and -- well, strike
that.

The folks you are e-mailing on
Friday, September 26, are those all Alvarez
people?

A. Yes. Well, let me just
double-check. Yes.

Q. Towards the bottom of your e-mail
where you write "a few thoughts," you write:
"After you guys spend a little time with these
things we should probably arrange a call with
the Barclays guys (aka former Lehman - the guys
at the table early Monday morning were
apparently Paolo and Alex Kirk) and Weil to
make sure we all understand these details and
make sure these are disseminated appropriately
through Barclays - so there is no confusion
about "what stuff be ours", and to ensure
appropriate security controls (which the TSA
requires they keep)."

Was this part of your effort to make

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sure you understood what assets and liabilities
went over with the transaction and what assets
and liabilities stayed with Lehman?

A. This was more -- this was focused on
what assets were remaining with us, this
comment here.

Q. And is that a function of
understanding what assets went over to
Barclays?

A. Correct.

Q. And did you try to do this?

A. Yes.

Q. Then the next e-mail chain -- next
e-mail response in this chain is from Brian
Marsal to yourself.

Can you identify Mr. Marsal's
position?

A. Where is the e-mail from Brian?

Q. I believe it's the very bottom --
next -- it's the response.

A. Oh, I see. It's cut over on the
other page.

Q. It's the response to your e-mail.

(Document review.)

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A. Yes, I recall.

Q. Okay. And can you -- what was Mr. Marsal's position at this time?

A. Chief restructuring officer.

Q. For Lehman?

A. Correct.

Q. He writes: "Jim, I think that your team needs to be the fail safe on both the Barclays and Bain transaction to outline what was sold and what was kept per the agreement and confirm that that is actually what happened. Can you take responsibility and develop a plan to complete the above."

Did you, in fact, undertake that responsibility?

A. I undertook -- I undertook it initially and elements of it then would transfer to David Coles and his team.

Q. So part of the assignment was to first understand what was sold and kept per the agreement, and the other part was to make sure that that's what actually happened, both parts of that?

A. Correct.

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Q. And turning to the previous page where you are writing back to Harvey Miller, do you see that?

A. Yes.

Q. You write: "I spent some time on this with David Murgio of your shop last night. We plan to get a group together for a walk-through of the final deal and detailed schedules early next week, including a number of people from Weil, Lehman, Alvarez."

Did you go ahead and do that?

A. We did. At least with some parts of this group. I can't recall all of the folks.

Q. Let me show you a document previously marked as Exhibit 464-A.

(Document review.)

Q. Do you recognize this as an e-mail chain that you were involved with?

A. Yes.

Q. And do you recognize the attachments to the e-mail?

A. Yes.

Q. And the initial e-mail appears to be from Glenn West to a number of people at

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Alvarez dated September 27th?

MR. TAMBE: Objection. I'm not sure you are reading that right.

Q. Okay. Let me start over again.

Well, there is an initial forwarding.

Do you recall receiving this e-mail that begins on the bottom of the first page, which is 2287, from Weil Gotshal?

A. I don't recall it.

Q. But you recall the attachments and you recall getting the attached from Weil Gotshal in this time frame?

A. I recall this attempt to recap assets and liability of the transaction.

Q. And you don't have any reason to believe you didn't receive this --

A. No.

Q. -- document at the time indicated on the face of the e-mail?

A. No.

Q. And looking at the attachment, if you would look at Bates page AM 2289 down at the bottom right-hand corner.

A. I don't have that.

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MR. TAMBE: I don't either.

MR. MILLS: It looks like 89 through 92.

MR. THOMAS: Okay, in this document apparently there is two. It's out of order. This is --

Q. Exhibit 464-A has two attachments to it and they may be in reversed order at least in terms of the Bates stamping.

A. Okay.

Q. So looking at Exhibit 464-A and the attachment at A&M Bates stamp 2289, do you see the bottom bullet point that says: "During the period of 60 days following the closing Barclays has the right to assume or reject contracts that are related to the assets that it has purchased from the Lehman entities"?

A. Yes.

Q. Is that consistent with your understanding of the deal at the time?

MR. TAMBE: Objection to the form of the question. Lack of foundation.

A. I recall -- I can't recall 60 days or not. I recall there were -- there wasn't

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2 perfect clarity on contracts -- wasn't perfect
3 clarity on these contracts as to who was going
4 to need what contracts to run the respective
5 businesses and this was the way that the
6 agreement had -- my understanding that Barclays
7 had the 6- -- this some day period, I don't
8 recall 60 days, but had some days to make some
9 determinations on these contracts.

10 Q. So any liability assumed by Barclays
11 with respect to contracts would be based upon
12 Barclays' discretion in choosing what contracts
13 to accept; correct?

14 MR. TAMBE: Object to the form of
15 the question and lack of foundation.

16 A. I don't know the -- I didn't study
17 the exact legal issues involved in the right
18 to -- on these contract rights personally.

19 Q. Was that your understanding, though?

20 A. I had a fellow on my team, Bill
21 Gordon, who was running a process to work in --
22 to work on the contracts and what I am thinking
23 is contracts around things like printers and
24 copier machines and this kind of thing. That's
25 what I recall on this.

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2 Q. So was Bill Gordon trying to figure
3 out which contracts were going to be assumed by
4 Barclays and which were not to understand which
5 contracts Lehman would still be responsible
6 for?

7 A. Correct.

8 Q. And if you would turn the page,
9 please, to Bates stamp 2290, do you remember
10 receiving this chart from Weil?

11 A. I don't recall this chart.

12 Q. Do you know if this chart was sent
13 to Alvarez to help Alvarez understand
14 consistent with the assignment of understanding
15 what assets went over pursuant to the agreement
16 and which didn't?

17 MR. TAMBE: Objection to the form of
18 the question.

19 A. I don't recall this being something
20 we focused on, that I -- I didn't focus on this
21 table.

22 Q. You don't recall why Weil Gotshal
23 was sending to you on September 27th a chart
24 listing the assets that were included as
25 purchased assets and those that were excluded

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2 as assets?

3 A. I recall this document. I don't
4 recall this table.

5 Q. Do you recall why Weil Gotshal was
6 sending you this information concerning the
7 deal?

8 A. I recall --

9 MR. TAMBE: Object to form.
10 Go ahead.

11 A. I recall a -- I recall the attempt
12 to -- the very difficult attempt to figure out
13 what the estate had left in to manage.

14 Q. What does that mean, what the estate
15 had left to match?

16 A. Manage.

17 Q. To manage. Okay.

18 Couldn't you just pick up the
19 contract and read it and see what went over and
20 what didn't?

21 A. I tried that too.

22 Q. Did you need help -- why didn't that
23 work?

24 A. It was -- it wasn't all in the
25 contract. It was schedules and conversations

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2 that I wasn't part of and understanding how it
3 all came together was incredibly difficult.

4 Q. Were there any assets that you
5 recall that were transferred as part of the
6 sale agreement that weren't identified in the
7 sale documents?

8 A. Restate.

9 Q. Were you aware of any assets that
10 were transferred as part of the agreement that
11 you didn't believe were reflected in the sale
12 agreement?

13 A. There was, I recall, people working
14 on things like stadium tickets, all sorts of
15 things, and trying to figure out what was
16 transferred and what was not and I remember
17 people working on that process.

18 Q. Let me ask you to look at another
19 part of the attachment here, which is AM 2293.
20 It's a document entitled Lehman Brothers
21 Barclays Transaction, Division of Assets and
22 Liabilities. Do you recognize this document?
23 (Document review.)

24 A. I recall this document being
25 prepared by Weil. I can't say I recall the --

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2 I recall all of this detail or this detail.

3 Q. Do you recall seeing this document?

4 A. Yes, I recall this document.

5 Q. And under -- did you understand this
6 to be describing which assets were included in
7 the sale transaction?

8 MR. TAMBE: Object to the form of
9 the question.

10 A. Did I -- I'm sorry, rephrase. Did
11 I --

12 Q. Did you understand this document to
13 be describing the assets that were included in
14 the sale transaction with Barclays?

15 A. Yes.

16 Q. And on 2293 under Purchased Assets
17 and under Security and Trading Operations do
18 you see the first bullet point that says: "The
19 securities set forth on Schedule A to the
20 Clarification Letter, i.e., the securities
21 subject to the Barclays repurchase agreement"?

22 A. I see that.

23 Q. Did you understand at this time that
24 Barclays was acquiring all of the collateral
25 associated with the Fed repo loan?

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2 A. No.

3 Q. Well, did you understand that after
4 you got this document and read it?

5 A. I understood that there were a lot
6 of documents trying to pull together -- that
7 tried to -- clarification letters and documents
8 and schedules and we had a process to try to
9 understand numerically, you know, what that
10 left us with, what exactly did we have left, I
11 mean, sort of detail trying to understand
12 exactly what securities we had left.

13 Q. In roughly this time period of
14 September 27th, you understood that as part of
15 the sale transaction Barclays was getting all
16 the collateral associated with the repo;
17 correct?

18 MR. TAMBE: Objection. Asked and
19 answered.

20 A. I did not understand -- I did not
21 understand the transaction completely.

22 Q. Not my question.

23 The question is you understood that
24 as part of the sale transaction all of the
25 collateral associated with what was the Fed

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2 repo -- do you know what I am referring to when
3 I say the Fed repo?

4 A. I do.

5 Q. And you know there was collateral
6 associated with that repo?

7 A. Yes.

8 Q. And you understood that all of that
9 collateral was supposed to be conveyed to
10 Barclays as part of the sale transaction;
11 correct?

12 A. I don't know about all. I know that
13 collateral was associated with that Fed repo
14 and that was supposed to be -- that was
15 supposed to be part of this transaction.

16 Q. Did you ever have a belief that some
17 portion of the repo was supposed to not be
18 transferred to Barclays?

19 A. No.

20 Q. Okay. And you understood that what
21 Weil is telling you here is confirming that all
22 of the repo collateral was included as a
23 purchased asset; right?

24 MR. TAMBE: Objection to the form of
25 the question.

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2 A. I believe that was the case.

3 Q. Okay. And you -- in this rough time
4 frame you would have reviewed the Clarification
5 Letter?

6 A. Made an attempt to understand it,
7 yes.

8 Q. Okay. So you read it and you saw in
9 there that it transferred the Fed repo
10 collateral to Barclays; correct?

11 MR. TAMBE: Objection to the form of
12 the question.

13 A. I recall the Fed repo. I don't
14 recall whether it was in the Clarification
15 Letter or not.

16 Q. Let me go ahead and show you a
17 document marked 25, and we will come back to
18 the current document so you can just leave it
19 there. This is a copy.

20 Do you recognize Exhibit 25?
21 (Document review.)

22 A. I do not.

23 (Document review.)

24 MR. TAMBE: Do you want him to read
25 it?

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MR. THOMAS: No, but what he is doing is good, flipping through it.

MR. TAMBE: So you want him to flip through it?

MR. THOMAS: Yes.

(Document review.)

A. Okay.

Q. Having had a chance to now flip through the document, do you recognize it as what is referred to as the Clarification Letter?

A. I do.

Q. And do you see under Purchased Assets section 1(a)(ii) towards the bottom of the first page there, and then capital A that it includes the securities owned by LBI and transferred to purchaser or its affiliate under the Barclays repurchase agreement?

A. I see those words.

Q. Okay. And if you turn to paragraph 13 of page 5 entitled Barclays Purchase Agreement, it says: "Effective at closing all securities and other assets held by purchaser under the September 18th, 2008 repurchase

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agreement among purchaser and/or its affiliate and LBI and/or its affiliates and the Bank of New York as collateral agent (the Barclays repurchase agreement) shall be deemed to constitute part of the purchased assets in accordance with paragraph 1(a)(ii) above." Do you see that?

A. I see those words.

Q. Okay. And when it says "all securities and others assets," do you understand that to be conveying all of the repo collateral to Barclays as part of the sale transaction?

MR. TAMBE: Objection to the form of the question.

A. I do.

Q. Does this refresh your recollection that, in fact, all of the repo collateral was being conveyed to Barclays as part of the sale transaction?

A. That is my understanding.

Q. And was that your understanding at the time?

A. I haven't looked at any of this

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since April, prior to April of this year, so I just don't recall all the details.

Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays?

A. Because I didn't fully understand the transaction, we were -- I was never sure of anything in that transaction.

Q. Would you agree that --

A. I was never sure.

Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays?

MR. TAMBE: Objection to the form of the question.

A. I can see those -- the words that say that, yes.

Q. Okay. Going back to 2293, the second bullet point, the last bullet point on the page, says: "The securities and other assets held in LBI's clearance boxes as of the time of closing." Do you see that?

A. Yes.

Q. Is that consistent with your

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understanding of the Barclays sale transaction?

A. Yes.

Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction?

A. Rephrase "understanding of the" -- say that again.

Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction?

A. That -- yes.

Q. And the parenthetical there where it refers to "and any property that may be held to security obligations under such derivative," do you understand that to be referring to collateral associated with the exchange-traded

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2 derivatives?
3 MR. TAMBE: Object to the form of
4 the question.
5 A. I don't understand this piece.
6 Q. Do you recall asking Weil at any
7 point to clarify it?
8 A. I don't.
9 Q. Do you know if you had an
10 understanding of that at the time?
11 A. I don't recall focusing on the
12 exchange-traded derivatives.
13 Q. And just to be clear, it's your
14 testimony that you are not sure if the
15 parenthetical, "and any property that may be
16 held to security obligations under such
17 derivative," is referring to collateral or not?
18 A. I don't --
19 MR. TAMBE: Object to the form of
20 the question.
21 You can answer.
22 A. I don't understand what that means.
23 Q. Do you believe it to be referring to
24 collateral?
25 A. Property -- I read it to -- it reads

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2 as property.
3 Q. It reads as any property that may be
4 held to security obligations under such
5 derivative.
6 My question to you is do you believe
7 that that's referring to collateral?
8 MR. TAMBE: Objection.
9 A. Property held for security
10 obligations and collateral presumably are the
11 same thing.
12 Q. And when it says "any property,"
13 assuming it's referring to collateral, that
14 would include both securities and cash;
15 correct?
16 MR. TAMBE: Objection to the form of
17 the question.
18 A. I don't know.
19 Q. How do you read that, assuming
20 that's referring to collateral when it says
21 "any property," would you interpret "any
22 property" to include things like security and
23 cash?
24 MR. TAMBE: Object to the form of
25 the question.

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2 A. Yes.
3 Q. When you received this from Weil on
4 September 27th, do you recall going back to
5 Weil with any follow-up questions concerning
6 the document they sent you?
7 A. I recall attempting to summarize the
8 transaction -- not the transaction. To
9 summarize what was -- what was -- well,
10 summarize the transaction and to summarize what
11 was left for the estate to manage as the
12 outgrowth of all of this effort.
13 Q. Was Weil cooperative with Alvarez in
14 providing information to Alvarez?
15 A. Yes.
16 Q. If you would look at 2295, please.
17 The top of the page -- well, strike that.
18 Let's go ahead and go to 2296,
19 please. And do you see where it says at the
20 top of the page: "Purchaser shall receive" and
21 then the second point says: "To the extent
22 permitted by applicable law and as soon as
23 practicable after the closing 769 million of
24 securities as held by or on behalf of LBI on
25 the date hereof pursuant to Rule 15C3-3 of the

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2 Securities and Exchange Act of 1934 as amended
3 or securities of substantially the same nature
4 and value," do you see that written there?
5 A. I see that.
6 Q. Is that also consistent with your
7 understanding of the deal, that the securities,
8 that value, was going over to Barclays as part
9 of the sale transaction?
10 MR. TAMBE: Object to the form of
11 the question.
12 A. I don't recall this particular piece
13 of the -- this particular 769 piece of the
14 transaction.
15 Q. Okay. You don't recall one way or
16 the other?
17 A. I don't.
18 Q. Did you subsequently come to learn
19 at some point in time -- strike that.
20 Do you recall learning at some point
21 in time that this was listed as a purchased
22 asset in the sale transaction documents?
23 A. I recall something we termed the --
24 that was being termed the unencumbered box and
25 I can't recall if this relates to that or not.

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2 Q. Do you have an understanding that
3 the unencumbered box referred to the clearance
4 boxes?

5 A. Yes.

6 Q. Does that help you recall that the
7 clearance box is something separate than the
8 15C3 assets?

9 MR. TAMBE: Object to the form of
10 the question.

11 A. The way we were, again, attempting
12 to understand the transaction, there were those
13 two pieces.

14 MR. THOMAS: Let me show you a
15 document that we will mark as 563-B.

16 (Exhibit 563-B, handwritten notes,
17 Bates stamped AM 004887 through AM 4892,
18 marked for identification.)

19 (Document review.)

20 Q. Do you recognize this document?

21 A. No.

22 Q. Do you recall there being discussion
23 in the other e-mails that we looked at about
24 you getting together a meeting or discussion
25 with Alex Kirk, Paolo Tonucci, Rod Miller at

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2 Weil among potentially others?

3 A. I do.

4 Q. And do you see this at the top says
5 "9/29 MTG" for meeting?

6 A. I see that.

7 Q. And do you see Alex, Rod Miller,
8 Paolo?

9 A. I do.

10 Q. Do you know whose handwriting this
11 is?

12 A. I do not. I don't know.

13 Q. It's not yours?

14 A. It's not my handwriting, no.

15 Q. Do you recall having a meeting with
16 Alex Kirk, Paolo Tonucci and Rod Miller at
17 about this time?

18 A. I recall meeting with Alex Kirk and
19 Paolo. I can't recall -- I can't recall Rod --
20 whether Rod was there or not, and I recall a
21 bigger -- others in the room as well. I can't
22 recall.

23 Q. And who else do you recall being
24 there?

25 A. Bill Gordon. I believe David Coles.

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2 And I can't recall beyond -- there are others
3 that might have been there, but I can't recall.

4 Q. And anyone else from Weil? Was Bob
5 Messineo there?

6 A. I don't recall Bob.

7 Q. How about Lori Fife?

8 A. I don't recall her being there
9 either.

10 Q. And who kind of ran that meeting
11 from the Alvarez perspective?

12 A. I think we -- I don't know that
13 there was sort of a runner of -- it would have
14 been a combination of myself and Bill and David
15 Coles and others. I can't remember there being
16 a specific runner of the meeting.

17 MR. THOMAS: And, counsel, this was
18 produced to us a couple days ago. Do you
19 know whose notes these are?

20 MR. TAMBE: I don't.

21 MS. DelMEDICO: We are providing you
22 with metadata today that will be produced
23 electronically.

24 MR. THOMAS: Today. Okay. Can you
25 tell me whose notes they are?

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2 MS. DelMEDICO: I can't. I can try
3 to find out for you.

4 MR. THOMAS: Okay.

5 Q. Do you remember that meeting? Where
6 was that meeting held?

7 A. I think the Lehman offices, the old
8 Lehman offices, but it could be -- we were in
9 this -- I think it was the old Lehman offices
10 in a conference room, or it could have been the
11 new Lehman offices. I can't recall. All the
12 conference rooms were the same, but there were
13 two offices across the street from one another
14 and I can't recall which place we were in at
15 the time.

16 Q. And was the purpose of that meeting
17 to understand the final deal both in terms of
18 what was in the agreement and what actually
19 occurred?

20 A. Yes.

21 Q. And did Mr. Kirk and Mr. Tonucci,
22 were they cooperative and answered your
23 questions?

24 A. They were rushed, they each had only
25 a little bit of time to give us, so we did not

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accomplish the task.

Q. In what sense did you not accomplish the task?

A. We left the room somewhat more befuddled than when we entered the room.

Q. And what befuddled you?

A. We still didn't understand the transaction clearly at that time.

Q. Did there come a point in time when you understood the transaction clearly?

A. No.

Q. Still even today you don't understand the transaction?

A. I haven't tried to in a long time.

Q. When did you leave Alvarez?

A. Beginning of April, late March.

Q. And at that time you still didn't understand the transaction?

A. Correct.

Q. What do you mean when you say you didn't understand the transaction?

A. I didn't -- there were lots of moving parts and I don't -- I never could put them all together, because things kept changing

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along the way. My understanding of things kept changing along the way.

Q. Did you feel there was some ambiguity in the language of the purchase agreement which you reviewed?

A. I didn't study it from that standpoint. There was ambiguity in my understanding of what happened. I could never quite -- and I am pretty -- usually pretty good at this stuff. I could never quite put it all together as to what -- because I wasn't there and that's where it was.

Q. What aspect of the deal could you not put together?

A. The interrelations of all the different -- just the actual math -- the ultimate mathematics of the transaction I couldn't put together ultimately.

Q. Did you ever identify any term of the purchase agreement that you thought was vague or unclear?

MR. TAMBE: Objection. Asked and answered. Objection to the form of the question.

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A. I couldn't ever understand exactly how the transaction ultimately came together and closed.

Q. Well, I am asking a little bit different question, I think.

Could you understand the transaction as spelled out in the purchase agreement in terms of what assets were supposed to be included in the purchased assets and which weren't?

A. I would come to a I will call it a draft understanding of the transaction and find something out different and it continued to evolve and I couldn't -- the tasks that Brian asked me to pursue, I could never get enough cooperation from the other side through my teams, and this wasn't all just me trying to -- through my teams to really understand the transaction.

Q. Has there been any asset or bucket of assets or type of assets that you had difficulty understanding were conveyed or not conveyed as part of the transaction?

A. There was a -- there was -- you

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mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against -- again, I'm not a valuation person. I am trying to just follow what happened in terms of control -- asset control, and there was a haircut taken in the transaction that I never quite understood and there was liabilities that others on the team, David Coles' team, were trying to understand that were being assumed by Barclays that we could never get good detail and understand.

Q. Anything else you can think of not having clarity on?

A. Then there were other things like the stadium tickets and the who got to sell Lehman's, you know, caps and bags. Just this kind of stuff. There was lots of this kind of stuff that we never had great clarity on.

Q. Anything that you would consider material?

MR. TAMBE: Objection to the form of the question.

A. The initial two things I mentioned

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2 were more material than the latter piece that I
3 mentioned.

4 Q. Did you consider the stadium seats
5 or anything else material to the transaction?

6 A. No.

7 MR. TAMBE: Now is a good time for a
8 break, Tom.

9 MR. THOMAS: Okay. Let me finish up
10 with the current document.

11 MR. TAMBE: That's fine.

12 Q. Are you okay to finish up with this
13 document?

14 A. Sure.

15 Q. Let me ask you to turn to page 4889
16 of Exhibit 563-B, and I understand these are
17 not your notes and obviously we are going to
18 depose whoever it is who wrote the notes as
19 soon as we are told that information, but this
20 is notes of a meeting that you were at and
21 participated in; correct?

22 MR. TAMBE: Objection to the form of
23 the question. I don't think you have ever
24 established that.

25 A. I do -- I was at a meeting with the

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2 people I mentioned earlier. I can't tell you
3 for sure that this is that same meeting.

4 Q. Is there any doubt in your mind that
5 you were at this meeting that the notes are
6 referring to?

7 MR. TAMBE: Object to the form of
8 the question.

9 A. There actually is some doubt,
10 because there may have been other meetings that
11 I wasn't at with either Paolo or Alex, so I
12 can't for sure know that this is the same one,
13 the same meeting.

14 Q. Okay.

15 A. I assume it is, but I don't know for
16 sure.

17 Q. You assume so because it's obviously
18 a detailed discussion of the deal on September
19 29th shortly after you were tasked to meet with
20 these people and find out all you can about the
21 actual final deal; correct?

22 MR. TAMBE: Object to the form.

23 A. I assume so, because it's in the
24 same week that I probably had that same
25 meeting.

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2 Q. Do you think there might have been
3 other people at Alvarez secretly meeting with
4 Paolo and Alex discussing the deals that you
5 didn't know about?

6 A. I don't know for sure. I know
7 that -- well, there were others on the Alvarez
8 team that were trying to help understand this,
9 including Bill Gordon and Al Lakhani and some
10 of the folks that were referenced, and they
11 were having meetings that I wasn't at together.
12 I don't know -- I just don't know exactly
13 whether they got any time with Alex or Paolo in
14 addition to the time that I was in a meeting
15 with them. I just don't know.

16 Q. So in addition to the description of
17 the deal that you got from Alex and Paolo, your
18 colleagues at Alvarez & Marsal may have also
19 gotten additional descriptions of the deal from
20 them?

21 A. I don't know.

22 Q. Would you take a few minutes to flip
23 through these notes. Perhaps that will refresh
24 your recollection whether these notes are from
25 a meeting that you attended.

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(Document review.)

2 A. I can't -- I can't read all the
3 handwriting, but...

4 (Document review.)

5 A. Okay.

6 Q. And having looked at the substance
7 of what the notes are referring to, does this
8 appear to be the subject matter discussed in
9 the meeting that you attended on or about 9-29
10 with Mr. Tonucci and Mr. Kirk?

11 A. Parts of this would have been the
12 subject matter that we discussed and I can't be
13 absolutely sure on all of the pieces, but the
14 parts of this are subject matter for what we
15 would have discussed in the meeting with those
16 two.

17 Q. And having reviewed the notes of
18 this meeting, do you believe that this is a
19 meeting that you attended?

20 A. I -- I don't -- I think so, but I
21 can't tell you for sure. I don't know that
22 there wasn't another meeting.

23 Q. If you would turn, please, to page
24 4889. Do you recall in your meeting with
25

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Mr. Tonucci and Mr. Kirk whether they gave you a description of what happened with the we will refer to it as the \$7 billion that did not go to Barclays that was supposed to?

MR. TAMBE: Objection to the form of the question.

A. I recall trying to piece the transaction together. That's what I recall.

Q. Do you recall there being an issue with Barclays having sent over \$45 million in cash and having not gotten all the assets in return that it was supposed to get?

A. I recall there was an issue between JPMorgan, Barclays and Lehman.

Q. And you recall it generally involving the fact that Barclays had put out \$45 billion in cash and not gotten all the securities that it was supposed to have gotten?

A. Yes.

Q. And do you recall Mr. Kirk or Mr. Tonucci explaining to you in this meeting what happened?

A. Yes.

Q. Okay. Do you see a chart at the top

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of 4889?

A. Yes.

Q. Do you have an understanding of what that chart is showing?

MR. TAMBE: Object to the form of the question.

A. In a general sense, yes.

Q. Can you explain what it's showing in a general sense, please.

A. I understand it to be generally trying to follow the transaction.

Q. And do you see the box where it says kept 8.6 something cash, 8.6 billion cash?

A. Uh-huh.

Q. Do you know what that's referring to?

A. I do not, other than it says "held back from Fed" next to it.

Q. Turning down a couple of lines it says "Sunday Barclays talked to JPM, resolve \$7 billion cash." Do you see that?

A. I see that.

Q. The next line it says "8.4 billion securities worth half amount." Do you see

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that?

A. I see that.

Q. Do you recall in this meeting you attended a discussion about the securities being only worth half of what they were marked at?

MR. TAMBE: Objection to the form of the question.

A. I do not.

Q. Do you recall generally in this part of this discussion that some of the securities that were associated with the repo collateral were not, in fact, worth what they were marked at?

A. I recall the \$45 billion number having been thought to be \$50 billion worth of value and there was a description of a -- I don't recall if it was in this meeting. A description of a fight about whether it was worth 50 billion or 45 billion.

Q. There was a question discussed as to whether it was really worth the amount that it was nominally marked at; is that right?

MR. TAMBE: Object to the form of

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the question.

A. There was a dispute on what that was -- on what the 50 billion was worth, yes. I recall that.

Q. And you understood that Barclays did not believe it was worth 50 billion, but believed it was worth roughly in the neighborhood of about \$5 billion less than that?

MR. TAMBE: Objection to the form of the question.

A. I do not know what Barclays believed it was worth. I don't know.

Q. Do you know -- then what was the disagreement about in terms of -- was there any disagreement in terms of the valuation of those securities?

A. I wasn't there, so I don't know specifically, but I know it was described as there was a fight about -- there was a fight where the management team was -- believed the securities -- that the management team was -- I don't know what people believed, but there was a \$50 billion number and a \$45 billion number

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2 and Barclays was at 45 and the Lehman folks,
3 Alex and Paolo, were at -- they were at 50 and
4 there was a fight about it. That's what I
5 recall.

6 Q. Are you sure Alex and Paolo were at
7 50 or was it the case that those were the
8 marks?

9 MR. TAMBE: Object to the form of
10 the question.

11 A. I don't recall where Alex and Paolo
12 would have been at. I don't know where they
13 were -- what they -- I remember there being a
14 \$50 billion number, though.

15 THE VIDEOGRAPHER: The time is
16 11:06. We are going off the record.

17 (Recess was taken from 11:06 to

18 11:06.)

19 THE VIDEOGRAPHER: The time is
20 11:06. We are back on the record.

21 BY MR. THOMAS:

22 Q. Do you recall anyone from Lehman
23 ever expressing a belief as to what they
24 believe the actual value of those securities
25 was?

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2 the question.

3 A. I see two numbers. I see 42.9 and I
4 see 38, which are different to the tune of 4.9,
5 and I don't know what the 5.1 is.

6 Q. And if you take the 48 -- take the
7 38 cash and add 7, you get the 45 billion that
8 Barclays paid in cash; right?

9 MR. TAMBE: Object to the form of
10 the question. Does 38 plus 7 equal 45?
11 The math?

12 MR. THOMAS: It's a speaking
13 objection. I've got the objection.

14 MR. TAMBE: These are not his notes.

15 MR. THOMAS: You kind of yelled the
16 objection, so I don't know if it was
17 like -- you know, what's going on here.

18 MR. TAMBE: I will tell you what's
19 going on. What's going on here is --

20 MR. THOMAS: The federal rules
21 require you to not make these kind of
22 speaking objections in the middle of a
23 question and I will just ask you -- you
24 have stated your objection. You have
25 preserved it.

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2 MR. TAMBE: Object to the form of
3 the question.

4 A. No.

5 Q. If you would turn the page to 4890.
6 About three-quarters of the way down there
7 appears to be a reference to "paid 38" I am
8 going to say billion "in cash to buy 42.9B
9 Lehman asset" and it says "different" --
10 appears to say "different valuation." Is that
11 how you read that?

12 MR. TAMBE: Object to the form of
13 the question.

14 Q. Then underneath it says "5.1"?

15 A. I see that. "Different" -- yeah, I
16 don't know what that word is, but it could be
17 valuation.

18 Q. The last word is "valuation"; right?
19 "5.1."

20 MR. TAMBE: Object to the form.

21 Q. Does that sound like the difference
22 in valuation that you were discussing allowing
23 for the fact that there were \$7 billion that
24 didn't get transferred?

25 MR. TAMBE: Object to the form of

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2 MR. TAMBE: Well, what the rules
3 also require is that you have a fair
4 examination. He has already told you this
5 is not his handwriting. You are asking him
6 to do math based on numbers you are reading
7 on a piece of paper.

8 MR. THOMAS: You are arguing to give
9 the witness coaching.

10 MR. TAMBE: It's an improper
11 question.

12 MR. THOMAS: Improper objection.

13 A. What's the question?

14 Q. Do you understand if you add the 38
15 billion -- at this meeting where this was
16 discussed that you intended as part of your
17 assignment to figure out what the deal was --

18 MR. TAMBE: Objection. Lack of
19 foundation.

20 MR. THOMAS: I haven't even asked
21 the question yet.

22 Q. When you add the 38 billion and the
23 7 billion that didn't get transferred, that
24 adds up to the 45 billion that Barclays paid in
25 cash; correct?

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MR. TAMBE: Object to the form of the question. Lack of foundation.

A. 38 and 7 is 45, correct.

Q. Okay. Is there any doubt in your mind that when it says here "paid 38 billion in cash" that that's referring to the 45 billion that Barclays paid minus the 7 billion that went missing?

A. I do not know.

MR. TAMBE: Objection to the form of the question.

Q. You don't know? You have no idea?

A. I didn't write this.

Q. I understand, but that's not my question.

Is it your understanding that the 38 billion is 38 billion there in paid cash because it's taking out from the 45 billion in cash that Barclays paid the 7 billion which ended up not going across in the transaction and ended up being the subject of an extensive settlement agreement in which you were involved?

MR. TAMBE: Object to the form of

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the question. Lack of foundation. Asked and answered.

A. I'm sorry. Is there a question?

Q. Yes. Do you understand the reference to the 38 billion there paid in cash to be simply the 45 billion that Barclays paid in cash minus the 7 billion over which there was a dispute because Barclays didn't get the assets that it was supposed to get?

MR. TAMBE: Object to the form of the question. Lack of foundation. Asked and answered.

A. I don't know what this means.

Q. So it's your testimony that you have no idea what that "paid 38 billion in cash" is referring to?

A. What I recall is -- the numbers I recall is a \$50 billion number and a \$45 billion number. That's what I recall from this meeting.

Q. And you recall there being a dispute about \$7 billion for which Barclays did not receive the securities that it was supposed to receive on the night of that Thursday and that

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subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in December of 2008?

MR. TAMBE: Objection to the form of the question. Asked and answered.

A. I don't know. I don't know. I don't know the settlement that you -- I don't know the settlement you mentioned.

Q. Do you recall that there was a \$7 billion issue with Barclays not getting securities it was supposed to get in return for that \$7 billion?

A. I recall that there was some sort of settlement, yes, between JPMorgan and Barclays and LBI and I can't remember the details.

Q. Do you recall when you were following the deal over the weekend and your references in your e-mails to JPM being at Weil, do you recall those e-mails?

A. I do.

Q. Do you recall at some point over the weekend it being agreed that Barclays was just going to get paid back the \$7 billion?

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A. I don't recall that over that weekend, no.

Q. Do you recall the \$7 billion figure being an issue?

A. I recall there being an issue with JPMorgan in the transaction.

Q. And do you recall the \$7 billion figure?

A. I recall -- I recall the \$7 billion figure, yes.

Q. Is there any doubt in your mind that paid 38 billion here in cash is simply referring to the \$45 billion paid by Barclays minus the \$7 billion?

MR. TAMBE: Objection, asked and answered. Objection, lack of foundation. Objection, form.

A. I do not know.

Q. No idea how they -- what that \$38 billion is referring to?

A. I didn't write it, so I don't know.

Q. Do you recall in the meeting a \$38 billion figure being discussed?

A. No. I recall discussing 50 and 45.

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That's what I recall.

Q. Now, when you say 50, do you recall there being a nominal valuation of 49.9 or 49.7?

A. I don't recall that number.

Q. In any event, you do recall this approximately \$5 billion difference in valuations being discussed in the meeting with Kirk and Tonucci?

MR. TAMBE: Objection to the form of the question.

A. I recall them describing -- fighting about the difference between 50 and 45.

Q. And you understood that to be a difference in valuation --

MR. TAMBE: Objection to form.

Q. -- of what -- question of what securities were actually worth versus what they were nominally marked at?

MR. TAMBE: Object to the form of the question.

A. I recall, yes, there being two different numbers relative to the transaction.

Q. And if you would turn the page,

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please, to 4891.

At the top of the page does this appear to you to be an effort at some type of balance sheet?

A. Yes.

Q. And if you recall the 45 and the 50 billion numbers, do you have any explanation for why we are dealing with the 38 and 43 numbers?

MR. TAMBE: Objection to the form of the question. Lack of foundation.

A. I don't recall.

Q. Do you see under Assets at the top of that page it says "repo" and then to the right it says "38," then it says "5" and then it says "43.1B"?

A. I see that.

Q. Do you understand that to be referring to, again, this \$5 billion valuation issue?

MR. TAMBE: Objection to the form of the question. Lack of foundation.

A. I do not know what they are referring to.

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Q. And in the right-hand column there is a reference to where it says "deal hits, 3.45." Do you see that?

A. I see that.

Q. Do you remember there being -- first of all, do you have -- just from reading this, do you have an understanding what that's referring to?

MR. TAMBE: Objection to the form of the question. Lack of foundation.

A. Sorry. Restate the question.

Q. Sure. From reading this do you have an understanding of what "deal hits" is referring to there, the 3.45?

MR. TAMBE: Same objection.

A. I don't know what they meant by that phrase.

Q. Do you have any understanding of it?

MR. TAMBE: Same objections.

A. I don't know.

Q. What do you think it means?

MR. TAMBE: What those words mean?

Q. What do you think he means by these words, "deal hits"?

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MR. TAMBE: Same objection. Lack of foundation.

A. Should I answer as to what I think?

Q. Yes.

MR. TAMBE: You can answer what those words mean to you, yes.

A. It looks like an accountant trying to have the two sides add up to the same number, 47.34, 47.34, and that being a number they need to get to add it up.

Q. And specifically the reference to "deal hits," do you understand that to be a loss on the deal?

MR. TAMBE: Objection to the form. Lack of foundation.

A. No.

Q. What do you understand it to be?

A. I just understand it to be an accountant trying to make the two sides add up and calling the remaining number something there. They called it deal hits.

Q. Do you recall any discussion about deal hits or loss on the deal at this meeting?

A. I recall the \$5 billion discussion

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2 at the meeting, the difference between 50 and
3 45 that I mentioned before, that's what I
4 recall.

5 Q. Right. Do you recall any discussion
6 about a loss on the deal or deal hits?

7 A. No.

8 Q. And having looked at this, you have
9 no understanding of whose handwriting this is?

10 A. I don't know.

11 MR. TAMBE: Objection. Asked and
12 answered.

13 Q. Did you take notes at that meeting?

14 A. No.

15 Q. Do you know who was taking notes?

16 A. I don't know.

17 Q. Let me go ahead and show you a
18 document we will mark as --

19 MR. TAMBE: Can we take a break
20 before you show him the next document?

21 MR. THOMAS: Sure, yes, go ahead.

22 THE VIDEOGRAPHER: The time is
23 11:20. We are going off the record.
24 (Recess was taken from 11:20 to
25 11:31.)

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2 THE VIDEOGRAPHER: The time is
3 11:31. We are back on the record.

4 BY MR. THOMAS:

5 Q. Mr. Fogarty, do you know a Mary
6 Korycki at Alvarez & Marsal?

7 A. Yes.

8 Q. And was she at this meeting that you
9 attended with Mr. Tonucci and Mr. Kirk?

10 A. She probably was, but I don't recall
11 specifically.

12 MR. THOMAS: Let me go ahead and
13 show you a document we will mark as
14 Exhibit 564-B.

15 (Exhibit 564-B, Lehman
16 Brothers/Barclays APA Lead Sheet, Bates
17 stamped AM 004893 through AM 004896, marked
18 for identification.)

19 MR. TAMBE: Just before you ask
20 about the document, I just want to be clear
21 that we did tell you at the break whose
22 handwritten notes those were.

23 MR. THOMAS: Right.

24 MR. TAMBE: I just want to be clear
25 on the record that you were given that

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2 information.

3 MR. THOMAS: Okay.

4 Q. Does that refresh your recollection
5 at all about who was at the meeting, the fact
6 that Miss Korycki was there?

7 MR. TAMBE: Object to the form of
8 the question.

9 A. No.

10 Q. Do you now have a recollection that
11 Mrs. Korycki was at the meeting?

12 MR. TAMBE: Asked and answered.

13 A. I -- she worked for me, she was on
14 my team, so she was at a lot of the meetings
15 that Bill Gordon or I would be at. I just -- I
16 can't -- I can't sort of visualize and sort of
17 see her there, if you will. I don't recall. I
18 don't doubt that she would have been there.

19 Q. Did you say she worked for you?

20 A. Yeah. Well, she was with Alvarez &
21 Marsal. She was a senior associate on my team.

22 Q. So she reported up to you?

23 A. She did, through Bill Gordon, but
24 she reported -- she worked for me on certain
25 things as well.

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2 Q. Assuming these are her notes, does
3 that make it more likely that this was, in
4 fact, a meeting you were at?

5 A. Yes, more likely.

6 Q. Let me show you a document marked
7 Exhibit 564-B.

8 (Document review.)

9 Q. Do you recognize this document?
10 (Document review.)

11 A. I recognize the footnotes. I don't
12 recognize the document with the handwritten --
13 the handwritten stuff. So no, I don't
14 recognize this document.

15 Q. When you say "the footnotes," do you
16 mean the printed materials or just literally
17 the footnotes? Well, strike that.

18 Do you recognize the chart on 4893
19 minus the handwriting?

20 A. I don't know if I -- I recognize the
21 chart. I don't know if I recognize the numbers
22 on this particular version of this chart.

23 Q. Do you know who prepared this chart?

24 A. The -- this is likely Mary Korycki
25 that prepared this chart.

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Q. Under your direction?

A. Correct.

Q. And what was the purpose of preparing this chart?

A. To understand what securities had transferred under the agreement so that the asset teams -- our asset teams at Lehman would know what was transferred.

Q. Do you know if you ever saw this document before with the handwriting?

A. Definitely not.

Q. You definitely have not seen it before?

A. No. I don't recall it anyway. I don't recall this.

Q. Let me go ahead and show you a document that's been previously marked as 493.
(Document review.)

Q. Do you recognize this as an e-mail from yourself dated September 29th, 2008?

A. 29th or 28?

Q. Well, at the top it appears to say from James Fogarty, Monday, September 29th.

A. I thought you said 28th. 29th, yes,

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this one at the top, yes.

Q. Do you recognize this as an e-mail that you sent on or about this time?

A. Let me read it here.

(Document review.)

A. Okay. Yes, I recognize this.

Q. And can you describe what the attachment is?

A. This was certain securities that were -- my recollection is certain securities that were to move as part of the transaction.

Q. Are these the clearing box securities?

MR. TAMBE: Object to the form of the question.

A. The -- what I recall is the unencumbered box was the way I recall it and that was -- that this was part of that process.

Q. And why were you obtaining this information? Was that part of your effort to make sure you understood what assets went over as part of the transaction and which didn't?

A. We were obtaining this to make sure that we understood what was really ultimately

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going to be -- that we had control over what was going over and what was -- that we understood what was going over and what was then left behind.

MR. THOMAS: Let me show you a document we will mark as Exhibit 565-B.
(Exhibit 565-B, e-mail dated 9/29/2008, Bates stamped WGM-LEHMAN-E 00000868 through WGM-LEHMAN-E 00001147, marked for identification.)

Q. Do you recognize this as an e-mail from Mary Korycki to yourself dated September 29th, 2008?

A. I do.

Q. And is this also part of the effort and process to gather information to make sure you understood what assets and liabilities were being transferred as part of the sale transaction and which weren't?

A. Yes.

Q. Was there ever a point in time that -- during this period of time, the last week of September when you were undertaking these efforts that we have been looking at in

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the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else refused to give you information that you thought was important to understanding what assets and liabilities were transferred and what weren't?

A. Yes.

Q. What was that time?

A. During this time we had a very difficult time getting an understanding. We would get documents, but getting an understanding was very difficult and that was not my -- that was through my team. Our team had a difficult time getting an understanding of the transaction.

Q. Let me ask a more specific question again. Was there any point in time when anyone refused to provide you any specific information or specific documents?

MR. TAMBE: Objection to the form of the question.

A. I don't recall specifically, but I know folks that were working on the project had a difficult time getting time with people to

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2 understand the transaction, yes.

3 Q. Is that because it was a very busy
4 time, tumultuous time?

5 A. I don't -- I don't know why that
6 there wasn't more time -- the estate took a
7 back seat to the interests of Barclays in
8 general.

9 Q. What's your basis for that
10 statement?

11 A. We had these attempts under way and
12 then we had attempts under way to get services
13 under the transition services agreement, which
14 I was responsible for with Bill Gordon, and we
15 had a difficult time getting Barclays to
16 provide support in that -- under that
17 agreement, and we had a difficult time getting
18 Barclays to help us understand -- understand
19 the estate and what we were managing.

20 Q. Putting aside the Transition
21 Services Agreement, the TSA, just with respect
22 to your efforts to understand the sale
23 transaction and what assets and liabilities
24 were conveyed and what weren't, was there
25 any -- were there any documents or pieces of

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2 information that you asked for but didn't get?

3 A. Personally?

4 Q. You personally, yes.

5 A. No.

6 Q. To your knowledge, anyone else on
7 the Alvarez team?

8 A. Yes. The team had a difficult time
9 getting things that they asked for along the
10 way, yes.

11 Q. Well, we are going to have to be
12 more specific. Can you identify any particular
13 documents or specific information that someone
14 on your team asked for but did not get?

15 A. I can recall a number of various
16 things that Al Lakhani's team was trying to
17 obtain from Barclays along the way and we were
18 having Al Lakhani, Phil Kruse and others trying
19 to understand this transaction over time and we
20 had a difficult time getting the things that we
21 were asking for.

22 Q. Can you identify something
23 specifically?

24 A. No.

25 Q. I mean, you had CUSIP lists of the

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2 securities that went over as part of the deal;
3 correct?

4 A. Well, we had lists, yes, and
5 there -- let's see. We had lists by security,
6 yes.

7 Q. Was there -- so did you at least
8 feel like you fully understood the assets that
9 went over, putting aside this kind of general
10 understanding of hows and whys about the deal,
11 did you understand what assets went over and
12 what assets didn't?

13 MR. TAMBE: Objection to the form of
14 the question.

15 A. Completely, no.

16 Q. What asset did you not know went
17 over but you at some later point in time found
18 out did go over?

19 A. I don't recall any.

20 Q. Do you recall ever asking anyone for
21 any additional information about the securities
22 that went over that you didn't receive?

23 A. I wasn't making the requests
24 directly myself.

25 Q. Do you recall anyone on your team

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2 asking for something like the list of
3 securities that we are looking at here and that
4 we looked at in previous documents but they
5 didn't receive?

6 A. I don't recall any specific item,
7 no.

8 Q. So is it fair to say, putting aside
9 information about the difference in the
10 valuation, the approximately \$5 billion
11 difference in valuation, putting aside that,
12 you understood in September what assets were
13 actually conveyed as part of the transaction?

14 MR. TAMBE: Objection to the form of
15 the question.

16 A. We had lists of securities that we
17 understood -- we understood those lists of
18 securities were the things that had moved
19 across, yes.

20 Q. You had lists of securities, you had
21 briefings from Weil, you had a detailed
22 description that we looked at from Weil
23 identifying the purchased assets that were sold
24 as part of the sale transaction; correct?

25 A. We had a lot of lists, yes.

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Q. Okay. And at some later point in time after September did you learn that some asset was conveyed that you didn't know about back in September?

A. There were things that came up and I can't recall the specifics.

Q. Do you believe --

A. Whether it was in the private equity book or -- I just can't recall the specifics. There were various things that would come up over time that we didn't completely understand had moved or not moved in the transaction.

Q. Can you identify any of those?

A. I can't.

Q. Were any of those items what you would consider material?

MR. TAMBE: Objection to the form of the question.

A. There were material things that -- yes.

Q. Can you identify those?

A. I can't recall the specifics where I -- there were things that we were understanding about the transaction over time

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that we didn't understand initially.

Q. But you can't identify any?

A. No. It's been a while. I can't recall.

Q. But in any event you had lists of the securities that went over in connection with the repo and that went over in connection with the clearing box, correct, the unencumbered box?

A. Yes.

Q. Let me go ahead and show you a document that's been previously marked as 463-B.

(Document review.)

Q. This is an e-mail from Conor Tully. Do you know who Conor Tully is?

A. He was on the FTI team.

Q. And what was FTI's role?

A. Working for the creditors.

Q. And what were they doing for the Creditors Committee?

A. Advisory services to the Creditors Committee for the case.

Q. In terms of financial advice?

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A. They had -- yeah, they basically had Houlihan Lokey and FTI and FTI was the accounting advisory part of the exercise, accounting, you know, reorganization kind of advisory.

Q. What was your understanding of FTI's specific role at this point in time, early October?

A. It was a pretty broad role in advisory of the committee.

Q. And they were looking at, among other things, the Barclays sales transaction; correct?

MR. TECCE: Objection to form.

A. I honestly don't recall -- I don't recall them looking at the -- FTI looking at the -- I don't recall Conor Tully in particular looking at this part of the transaction. I just don't recall it.

Q. When you say "this part of the transaction," what do you mean?

A. This part of the case I meant to say. I misspoke.

Q. You don't recall FTI looking at,

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examining the Barclays sale transaction?

MR. TECCE: Objection to form.

A. I don't recall.

Q. Who is William Fox?

A. William Fox is one of the other managing directors on the Alvarez team.

Q. What was his role in this?

A. Bill was working on the finance end and he would ultimately take over for David Coles as the CFO of the estate.

Q. And why were there communications between FTI and Alvarez & Marsal at this time?

MR. TAMBE: Objection to form. Lack of foundation.

A. I do not know.

Q. Are you surprised to see this?

A. No, I'm not surprised. I just -- I don't know what this particular -- I don't know.

Q. Did you ever speak with anyone from FTI?

A. No.

Q. Did you ever attend a meeting --

A. Oh, I'm sorry, speak to them, of

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2 course. I was connecting it to this. I, of
3 course, spoke to the people from FTI.
4 Q. And what did you speak with people
5 at FTI about?
6 A. We actually spent most of our
7 connection -- most of my connection with FTI
8 was through the HR process when we were -- we
9 had to build a workforce to manage the Lehman
10 estate assets.
11 Q. Let me ask you to turn to the
12 attachment. Let me ask, have you ever seen
13 this document before, the e-mail from Conor
14 Tully?
15 A. I have not.
16 Q. Looking at the attachment, at the
17 bottom it says "Alvarez & Marsal."
18 Let me ask do you recognize the
19 attachment?
20 A. I do not. I recognize these
21 footnotes. I don't recognize this exact
22 document.
23 Q. What are the footnotes? Can you
24 describe what the footnotes are?
25 A. The A and the B. The assets

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2 transferred under the repo and the unencumbered
3 box.
4 Q. The sheet that has the assets and
5 liabilities, the first page of the attachment,
6 do you see that?
7 A. I see that.
8 Q. Have you ever seen this sheet
9 before?
10 A. There were so many versions of this.
11 I can't -- I've seen stuff like this. I can't
12 recall that this -- that this version -- I
13 can't recall this version.
14 Q. Do you know who put together this
15 version or this document?
16 A. Mary Korycki was also working with
17 the finance guys and this is an accounting kind
18 of an approach to understanding things, and
19 working with the finance guys on some of this
20 over time, which would have been Bill Fox, so
21 that's what I presume.
22 Q. And, I'm sorry, Bill Fox worked with
23 your group or separately?
24 A. We would all work together on things
25 over time, but Bill Fox was -- yeah, we were

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2 all on the same Alvarez & Marsal team.
3 Q. Was he on your particular team
4 within Alvarez & Marsal or was it separate?
5 A. No, he and David Coles were working
6 the finance specific pieces of the case,
7 accounting/finance pieces.
8 Q. You think it may have been Bill Fox
9 that would have put together this document?
10 A. Perhaps.
11 Q. Was either Bill Fox or David Coles
12 with you at the September 29th meeting with
13 Tonucci and Kirk?
14 MR. TAMBE: Objection to form.
15 A. I'm fairly certain David Coles was
16 there and I can't recall if Bill Fox was there.
17 Q. And, again, looking at the first
18 sheet of the attachment, do you see where it
19 says "38 billion repo assets negotiated a
20 haircut and the assets transferred under
21 repo" slash and then parentheses "stale marks"?
22 A. I see that.
23 Q. Do you understand this to be
24 referring to that same approximately \$5 billion
25 valuation issue that was discussed in your 9-29

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2 meeting between the 38 and the 43?
3 MR. TAMBE: Objection to the form of
4 the question. Lack of foundation.
5 A. The 5 billion is, again, unless it's
6 serendipity here, this is the 5 billion that I
7 had in my head from the meeting and I had in my
8 head a difference between 50 and 45.
9 Q. And do you recall there being a
10 \$7 billion box loan?
11 MR. TAMBE: Objection to the form of
12 the question.
13 A. I don't know what that phrase means.
14 Q. Box loan?
15 A. I don't know what that phrase means.
16 Q. Do you see in the -- well, strike
17 that.
18 Do you see where it says "net book
19 loss, 3.27"?
20 A. I do.
21 Q. What is your understanding of what
22 "net book loss" means?
23 MR. TAMBE: Objection to form. Lack
24 of foundation.
25 A. My understanding is it's an

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2 accountant's approach to have the two sides
3 equal one another, to have the 47.31 and the
4 47.31 equate, and that is the then plug to make
5 the two add up.

6 Q. Would that reflect the loss on the
7 deal from the Lehman perspective?

8 MR. TAMBE: Objection to the form.
9 Lack of foundation.

10 A. This is not how -- again, I'm not a
11 valuation person. This is an attempt to do
12 accounting as -- my understanding of what it
13 is, it's an attempt to do the accounting.

14 Q. So you don't understand "net book
15 loss" to be referring to a loss on the
16 transaction --

17 A. No, because --

18 MR. TAMBE: Objection to form. Lack
19 of foundation.

20 A. I understand -- accounting and value
21 are not the same, and so book means book values
22 as opposed to value.

23 Q. So there might be a difference
24 between the book value of assets and their
25 actual market value?

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2 A. Correct.

3 Q. And do you know why FTI would have
4 an Alvarez & Marsal sheet like that attached to
5 Exhibit 463-B?

6 MR. TECCE: Objection to form.

7 A. It's fairly common that in our
8 business we work very closely with the advisors
9 to the committees and try to -- and share our
10 understanding, because we are ultimately
11 working for the creditors who they advise.

12 Q. And is that what happened in this
13 case?

14 MR. TECCE: Objection.

15 A. I do not know.

16 Q. Well, with respect to the Barclays
17 sale transaction, did you work with and
18 cooperate with the committee's advisors?

19 MR. TAMBE: Objection to the form of
20 the question.

21 A. I did not work with the FTI folks in
22 any understanding of this transaction
23 personally.

24 Q. Do you know if Alvarez & Marsal did?

25 A. I actually did not know -- I did not

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2 have an understanding of that until I saw Bill
3 Fox's name on this, so I didn't know what they
4 were doing.

5 Q. Let me show you a document
6 previously marked as 494.
7 (Document review.)

8 A. Okay.

9 Q. Do you recognize this document?

10 A. I do not. I recognize that I'm
11 listed on it, but I -- or am I listed on it?
12 Hold on a minute. No, I'm not listed on it, I
13 don't think. No, I don't -- the -- some of the
14 footnotes in the thing I recognize, but I don't
15 recognize the document.

16 Q. And which footnotes do you
17 recognize?

18 A. The -- page 3, 4 -- I actually don't
19 recognize 5. I recognize 3, 4 and 6 as, at
20 least in form, the kinds of schedules that I
21 recall.

22 Q. And is this the Mary Korycki that
23 worked with your group and reported up to you?

24 A. It is.

25 Q. It refers -- do you see this is an

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2 e-mail from her dated October 6th, 2008?

3 A. I do.

4 Q. Do you see that it refers to
5 materials for a 6 p.m. meeting?

6 A. I do.

7 Q. Do you have any understanding
8 what -- and then in the subject line it says
9 "materials for 6 p.m. meeting with Paolo
10 Tonucci re JPM \$7 billion." Do you see that?

11 A. I see that.

12 Q. Do you know if you were a
13 participant in that meeting?

14 A. I do not believe so.

15 Q. Did you know that that meeting was
16 going on?

17 A. I knew we had that overall effort
18 under way to continue to try to understand the
19 transactions and so forth.

20 Q. If you would look at the attachment
21 at -- titled A Recap of Week Ended 9-19, page
22 AM 3877.

23 A. Yes.

24 Q. Do you know if you have seen this
25 page before?

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A. I don't recall this page.

Q. If you would -- do you see under Wednesday -- well, strike that.

Do you see under Thursday a description concerning the Fed repo transaction?

A. I see Thursday 9/18 and I see words there.

Q. Okay. Do you see the third bullet point says: "JPM repaid the Fed 38 billion out of the Barclays 45 plus an additional 7 billion by selling or lending against other Lehman securities previously held by JPM, the remaining 7 billion from the Barclays 45 billion," then it says, parentheses, "45 billion minus 38 billion" --

A. Uh-huh.

Q. -- "was held by JPM in a separate account for the benefit of Barclays," do you see that?

A. I see that.

Q. Does this refresh your recollection that the \$38 billion number that was being discussed in the meeting you attended and

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reflected in the meeting notes was, in fact, the 45 billion paid by Barclays minus the 7 billion?

MR. TAMBE: Objection to form and lack of foundation.

A. I don't know this page. I don't know what -- I mean, it's -- the numbers are similar numbers from the other pages. I just don't -- I don't know this page.

Q. The question is does the information on this page refresh your recollection that the 38 billion paid by Barclays was simply the 45 billion minus the 7 billion over which there was a dispute involving JPM?

MR. TAMBE: Objection to the form of the question.

A. I remember there was -- yes, there was a \$50 billion number and a \$45 billion number and the differential was 5 and there was a piece of it that related to JPMorgan that was part of that settlement we referred to earlier and I don't recall the 38 and the 7 specifically.

Q. But the 38 and the 43 that we

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discussed earlier reflected in the meeting notes is simply the 45 and the 50 minus the 7 billion on each side; right?

MR. TAMBE: Objection to the form and lack of foundation.

A. I don't know.

Q. Is that what you assume it to be?

MR. TAMBE: Objection. Calls for speculation.

A. I assume that -- at my level what I understood and focused on was there was a \$50 billion number and there was a conversation about 45 versus 50 and it was different by 5, and I also understood that there was a piece of it relative to JPMorgan and I can't remember the specific details of that piece of it.

Q. And when you heard about the difference in the meeting, 38 billion versus 43 billion, did you --

MR. TAMBE: Objection.

A. I don't recall those numbers. I don't recall 43 billion.

Q. The 42.9 that we looked at in the meeting notes, you don't recall that number?

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A. I don't recall that number.

Q. Do you have any other explanation for the difference being discussed in the meeting between the 38 billion and the 43 billion other than the fact that it's simply the 45 billion versus the 50 billion but backing out the 7 billion on each side?

MR. TAMBE: Objection to form. Lack of foundation. Calls for speculation.

A. No.

MR. TAMBE: Asked and answered.

Q. At the bottom here, the last footnote on page AM 3877, it says: "The Fed loaned 45 billion via JPM in exchange for approximately 48 billion of collateral. When the Fed returned the collateral, JPM held the balance of collateral, approximately 8.6 billion, revalued marked at approximately 7 billion."

Are you knowledgeable about the basis for that remarking?

A. No.

Q. Let me ask you to turn the page. On AM 3878 under Consideration do you see in the

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2 box where it says "loss on sale, 3.1 billion"?

3 A. I see that.

4 Q. Do you understand that to be
5 indicating that Lehman had a loss on the sale
6 transaction of about 3.1 billion?

7 MR. TAMBE: Objection to the form.
8 Lack of foundation.

9 A. I understand that to be another form
10 of an accountant trying to have a plug to add
11 up the two columns so that they equal, and you
12 see very precisely the 47666.89 on both sides.

13 Q. And so that could be just an
14 accounting loss as opposed to an actual value
15 loss?

16 A. Correct.

17 Q. And if it was the case that the
18 assets -- some assets were -- had a higher book
19 value than an actual market value, that would
20 be one basis for explaining why it would be an
21 accounting loss; correct?

22 MR. TAMBE: Objection to the form of
23 the question. Lack of foundation.

24 A. An accounting loss has to do with
25 the difference between GAAP carrying value and

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2 proceeds by transaction.

3 Q. Let me show you a document
4 previously marked as 461-A.

5 Do you recognize this document?

6 A. Yes.

7 Q. Would you describe what it is,
8 please.

9 A. It's a report to the Creditors
10 Committee. We would report on an ongoing basis
11 to the Creditors Committee.

12 Q. And have you seen this document
13 recently?

14 THE WITNESS: Will I answer that?

15 MR. TAMBE: You can answer that.

16 THE WITNESS: Okay.

17 A. I saw this document recently in my
18 meeting with counsel.

19 Q. How much time did you spend with
20 Jones Day preparing for this deposition?

21 A. Too much. Seriously, was it an hour
22 and a half? Just discussing the upcoming day
23 and then I threw them out and went back to the
24 daily business.

25 MR. TAMBE: He did throw us out.

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2 Q. And what is the purpose for making
3 this report to the Creditors Committee?

4 A. Again, they are the key constituent
5 in the bankruptcy case and we are -- this is --
6 this would be a normal practice of the
7 management team of the bankruptcy estate making
8 sure they keep the creditor group well informed
9 of what we are trying to accomplish.

10 Q. And the section entitled Significant
11 Transactions, is that a section of this
12 document that you helped prepare?

13 A. Yes.

14 Q. And more specifically, did you
15 prepare the page that has the Bates stamp
16 number AM 4531?

17 A. I wouldn't have typed it, but I
18 would have been absolutely aware of the page.
19 My name, of course, is at the top of the page.

20 Q. And did you make this part of the
21 presentation to the Creditors Committee?

22 A. I did.

23 Q. Were members of Weil Gotshal at this
24 presentation also?

25 A. I believe Harvey and Lori Fife would

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2 have been there, the two I would recall, from
3 Weil Gotshal.

4 Q. And under Assets --

5 A. At least one or the other of them.
6 They weren't always both there. I just can't
7 remember exactly. One or the other of them
8 would have been there, sure. Maybe both.

9 Q. Under Assets Purchased, the
10 "43.1 billion repo assets, book value per
11 Lehman stale marks, negotiated a \$5 billion
12 reduction," do you see that?

13 A. I do.

14 Q. Is that the same \$5 billion
15 valuation difference that we have discussed
16 previously in this deposition?

17 A. It is.

18 Q. And what was the basis for your
19 understanding that Lehman's marks were stale?

20 MR. TAMBE: Objection to the form of
21 the question.

22 A. I specifically put the word "stale"
23 in quotes because that was how -- there was
24 some conversation around the marks not having
25 been -- from that meeting we referred to

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2 earlier with Paolo, some conversation around
3 the marks not having been trued up in a couple
4 of days or something like that.

5 Q. Was it a couple days or was it since
6 Friday, September 12th, the last business day
7 before the bankruptcy filing?

8 MR. TAMBE: Objection to the form.

9 A. I don't recall the exact time frame
10 that was referred to.

11 Q. And who was that discussion with?

12 MR. TAMBE: Objection. Asked and
13 answered.

14 A. I believe that was with Alex Kirk.

15 Q. Was this part of that same meeting
16 with Mr. Kirk and Mr. Tonucci?

17 A. Yes.

18 Q. And independent of that did you also
19 understand that Lehman's marks --

20 A. Can I just clarify?

21 Q. Sure.

22 A. I don't know that they were both
23 there for that meeting at the same time.

24 Q. Okay. Independent of that
25 discussion, were you aware that -- the week of

1 Fogarty - Highly Confidential
2 September 15th that Lehman was not fully
3 updating its marks on a daily basis?

4 MR. TAMBE: Objection. Lack of
5 foundation. Objection to form.

6 A. I did not know specifically other
7 than I knew via the Transition Services
8 Agreement we were not getting updated marks on
9 a timely basis subsequent to, you know, the
10 filing date.

11 Q. When you say "we were not
12 getting" --

13 A. Sorry, subsequent to -- actually, I
14 had no -- subsequent to the transaction --
15 after the transaction closing and pursuant to
16 the Transition Services Agreement we were not
17 getting updated marks during that time.

18 Q. The week of September 15th did you
19 see any updated marks during that week?

20 A. No.

21 MR. TAMBE: Objection to the form.
22 Lack of foundation.

23 Q. Were you aware of whether Lehman's
24 marks were being updated daily the week of
25 September 15th?

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2 A. Not aware.

3 Q. As you sit here today, do you have
4 any knowledge about whether Lehman's marks were
5 being updated the week of September 15th on a
6 daily basis?

7 A. Any knowledge -- I have knowledge --
8 not -- I recall the conversation with Alex Kirk
9 in that meeting that there was some, again,
10 number of days where the marks hadn't been
11 updated.

12 Q. Had not been updated?

13 A. Had not been updated prior to the
14 closing some number of days, and I can't recall
15 what was referenced.

16 Q. Okay. Did you ever have any reason
17 to doubt the accuracy of that?

18 A. No.

19 Q. When you made this presentation,
20 were you trying to be as accurate as possible
21 to the committee?

22 A. I was trying to be -- yes.

23 Q. And did anyone in response to your
24 presentation, your description of this \$5
25 billion difference between the 45 and 50 or the

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2 38 and 43, did anyone raise any questions
3 concerning that?

4 A. Yes. I recall -- I can't recall the
5 specifics, but I recall -- I recall framing in
6 my presentation, you know, a general concern
7 for not understanding the \$5 billion reduction
8 and I recall either in that meeting that day or
9 the day before, the day after, somewhere around
10 that period of time, a conversation with Mike
11 Fazio of Houlihan Lokey where they were
12 concerned about that \$5 billion reduction on
13 behalf of their committee.

14 Q. And did they express the nature of
15 their concern?

16 MR. TECCE: Objection to form.

17 A. Did they express the nature -- yes.
18 Mike had a lot of -- Mike expressed concern
19 that it -- that there wasn't a fair reduction
20 in the value.

21 Q. And did he explain why --

22 MR. TECCE: Objection to form.

23 Q. -- he thought it wasn't a fair
24 reduction in the value?

25 A. He had been doing some work on it

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<p>1 Fogarty - Highly Confidential</p> <p>2 and believed that it wasn't a fair -- that it</p> <p>3 wasn't a fair answer, but was struggling to</p> <p>4 have complete understanding of what transpired.</p> <p>5 Q. Do you have any knowledge of the</p> <p>6 work he was doing on it?</p> <p>7 MR. TECCE: Objection to form.</p> <p>8 A. I don't have any specific knowledge</p> <p>9 of the work.</p> <p>10 Q. Do you have any general knowledge of</p> <p>11 the work he was doing?</p> <p>12 A. Just that he was doing work. I</p> <p>13 don't know anything specific to the work he was</p> <p>14 doing.</p> <p>15 Q. Did you understand that to be</p> <p>16 attempting to value -- do an independent</p> <p>17 valuation of those assets?</p> <p>18 MR. TECCE: Objection to form.</p> <p>19 A. I -- you know, I don't know the</p> <p>20 nature -- the detailed nature of what he was</p> <p>21 doing other than he was concerned about it and</p> <p>22 trying to understand it.</p> <p>23 Q. Do you recall anything else he said?</p> <p>24 A. No, nothing -- nothing in</p> <p>25 particular, no.</p>	<p>1 Fogarty - Highly Confidential</p> <p>2 Q. In general, any other general sense</p> <p>3 of the conversation from him?</p> <p>4 A. Just very annoyed. Very annoyed by</p> <p>5 it all.</p> <p>6 Q. By the sale process or by the</p> <p>7 difference in valuation?</p> <p>8 A. The difference.</p> <p>9 MR. TECCE: Objection to form.</p> <p>10 Q. Do you recall him saying anything</p> <p>11 else --</p> <p>12 A. No.</p> <p>13 Q. -- in that conversation?</p> <p>14 A. No.</p> <p>15 Q. Now, you said in your presentation</p> <p>16 you framed it as not having a full</p> <p>17 understanding of the \$5 billion difference; is</p> <p>18 that right?</p> <p>19 A. Correct.</p> <p>20 Q. Do you recall what you said?</p> <p>21 A. Not verbatim.</p> <p>22 Q. Would you please tell me as best you</p> <p>23 recall what you said.</p> <p>24 A. I probably -- well, I recall</p> <p>25 generally talking about there being a dispute</p>
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<p>1 Fogarty - Highly Confidential</p> <p>2 at the closing table about the value of the</p> <p>3 repo assets being conveyed in the transaction</p> <p>4 and that there was a \$5 billion reduction in</p> <p>5 the -- what do you call it -- the -- against</p> <p>6 that 50 billion -- again, I keep having this</p> <p>7 \$50 billion number in my head, but obviously I</p> <p>8 see the 43 here, but that there was a</p> <p>9 \$5 billion reduction in the asset value and</p> <p>10 there was a lot of fighting about it at the</p> <p>11 closing table and that we didn't have an</p> <p>12 understanding -- a complete understanding of</p> <p>13 what transpired.</p> <p>14 Q. A lot of fighting about it between</p> <p>15 whom?</p> <p>16 A. Between management and the -- Lehman</p> <p>17 management and the Barclays representatives.</p> <p>18 Q. Do you know if you used the word --</p> <p>19 any synonyms for "reduction" in your</p> <p>20 presentation?</p> <p>21 MR. TAMBE: Object to the form of</p> <p>22 the question.</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you know if you recall -- you</p> <p>25 used the word "haircut" or "discount"?</p>	<p>1 Fogarty - Highly Confidential</p> <p>2 MR. TECCE: Objection to form.</p> <p>3 A. That's possible. I can't recall.</p> <p>4 Haircut is possible. That would be a word I</p> <p>5 might have used. I can't recall the specific</p> <p>6 word I used.</p> <p>7 Q. And approximately how many people</p> <p>8 were at this presentation, just roughly?</p> <p>9 A. I don't know. Thirty people, maybe.</p> <p>10 Something like that.</p> <p>11 Q. From the Creditors Committee, from</p> <p>12 Alvarez, from Weil Gotshal, from any other</p> <p>13 entities represented there?</p> <p>14 A. Creditors Committee, Houlihan, FTI,</p> <p>15 Alvarez, Weil.</p> <p>16 Q. Anyone from the trustee or their</p> <p>17 representative, Deloitte?</p> <p>18 A. No. That wouldn't have been</p> <p>19 typical. No.</p> <p>20 Q. Where was this presentation held?</p> <p>21 A. We -- it was either at the Weil</p> <p>22 offices or Milbank's offices. I didn't</p> <p>23 mention, of course, Milbank would there be too.</p> <p>24 Q. Other than Mike Fazio, did anyone</p> <p>25 else have any questions about this \$5 billion</p>

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2 difference?

3 MR. TECCE: Objection to form.

4 MR. TAMBE: Object to the form.

5 A. Possible. I can't recall
6 specifically who might have -- at least
7 possible some of the creditor -- I can't recall
8 exactly who might have had questions there. I
9 don't...

10 Q. Do you know what, if anything, Mike
11 Fazio did after this point in time to follow up
12 on his concern?

13 MR. TECCE: Objection to form.

14 MR. TAMBE: Lack of foundation.

15 A. In general there was pressing for
16 more information over time, but I don't know
17 what Mike specifically did after -- with his
18 process. I don't know.

19 Q. Do you recall anyone asking you or
20 Alvarez for additional information about this
21 issue?

22 A. No. No. Other than a recognition
23 that we were working on -- continuing to work
24 on trying to understand -- understand.

25 Q. I'm sorry, I didn't understand the

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2 last part. You are speculating that they
3 understood that you were continuing to try to
4 understand?

5 A. Well, because that's --

6 MR. TECCE: Objection.

7 MR. TAMBE: Object to the form.

8 A. That's what we would have said at
9 the -- when we were talking about it with the
10 Creditors Committee, that we were continuing to
11 try to understand the transaction.

12 Q. Do you recall saying that about this
13 point?

14 A. Yes.

15 Q. And did you -- what did you do to
16 further try to understand?

17 A. It's the same process I referred to
18 earlier, that -- and the process moved over
19 towards the finance team under Dave Coles to
20 continue the effort with Bill Fox to try to
21 continue to understand this transaction.

22 Q. The 43 billion or 50 billion, you
23 had a CUSIP list, so you knew which assets were
24 at issue; correct?

25 MR. TAMBE: Objection to the form of

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2 the question.

3 A. Correct, we had a CUSIP list.

4 Q. Did you make any efforts to
5 independently value those at the time?

6 A. No.

7 Q. Why not?

8 A. Not my skill set. I'm not a
9 valuation person.

10 Q. Do you know if someone else at
11 Alvarez did?

12 A. No. Not our -- it wouldn't
13 typically -- we didn't have that skill set in
14 our direct team at Alvarez, the team that was
15 on the Lehman case, we didn't have that skill
16 set.

17 Q. So when repo collateral goes over to
18 Barclays, or at least part of it goes over to
19 Barclays that Thursday, Friday, Barclays looks
20 at it and says "we don't think it's worth this,
21 we think it's worth less," and ultimately the
22 Lehman executives agree that it's valued less,
23 is that your understanding?

24 MR. TAMBE: Objection to the form of
25 the question. Lack of foundation.

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2 A. Rephrase that one. Ultimately --

3 Q. Ultimately the -- a negotiated
4 valuation of a lower amount was reached?

5 MR. TAMBE: Objection.

6 A. That's my understanding.

7 MR. TAMBE: Objection to the form of
8 the question.

9 Q. And if there was a question about
10 whether the updated valuation reached by the
11 two sides was reasonable or not and you had a
12 list of securities, "you" being Alvarez &
13 Marsal, why not just independently value them
14 and see if they are worth that amount?

15 MR. TAMBE: Objection to the form of
16 the question. Argumentative. Lack of
17 foundation.

18 A. We continued to through the teams
19 ask questions of Barclays and there came a
20 point in time where we weren't -- the
21 response -- they were not being responsive, I
22 think, is what really happened in that process.

23 Q. Not being responsive. I mean, did
24 you make any independent effort to value those
25 securities?

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MR. TAMBE: Objection to the form of the question.

A. No.

MR. TAMBE: Lack of foundation.

Q. Who was being not responsive? Is there some particular information that was asked of an individual at Barclays that the information wasn't provided concerning the valuation of these assets?

A. Yes. There was a number of requests to spend time with Barclays understanding the transaction and understanding what transpired and we were not receiving information.

Q. Can you identify a specific request to a specific individual?

MR. TAMBE: Objection. Asked and answered.

A. I can't.

Q. But you had the list of securities, you had the CUSIPs, and you didn't make any effort to value those independently?

MR. TAMBE: Objection, asked and answered. Objection, lack of foundation.

A. Sorry.

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MR. TAMBE: Isn't that like four times you have asked that question now? He has answered it.

A. Give me that question one more time.

Q. Sure. You had a list of securities, you had the CUSIPs, and you didn't make any effort to value those assets independently; correct?

MR. TAMBE: Objection. Asked and answered. Lack of foundation.

A. No.

Q. Is that correct?

MR. TAMBE: Objection.

Q. When you say "no," are you saying no, you didn't make that effort, or you --

MR. TAMBE: Objection.

A. I did not personally make that effort.

MR. TAMBE: Objection, form. Objection, foundation.

Q. Did anyone at Alvarez?

A. I don't recall that anyone did.

THE VIDEOGRAPHER: The time is 12:36. We are going off the record.

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(Recess was taken from 12:36 to 12:52.)

THE VIDEOGRAPHER: The time is 12:52. We are back on the record.

BY MR. THOMAS:

Q. Mr. Fogarty, did you ever study the value of the derivatives or related collateral of those transfers as part of the transaction?

MR. TAMBE: Objection to the form of the question.

A. No.

Q. Have you ever reviewed the original APA?

A. Have I -- parts of it I have flipped through. I can't say I have read the whole APA.

Q. Have you ever made any effort to analyze what assets were included as purchased assets as part of the original APA?

A. Yes.

Q. What was the purpose of that exercise?

A. To -- really to understand for the asset teams what we have -- what we have left

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to manage. That was the purpose of it.

Q. And when I say "original APA," let me go ahead and show you what I am referring to. It's previously marked as Exhibit 1 dated September 16th.

(Document review.)

Q. Do you have a general understanding that this is the initial agreement between Lehman and Barclays but that it had to be modified during the course of the week because of a bunch of changes in Lehman's business and assets?

A. I generally understand -- yes.

Q. And so this, if I refer to the original APA, will you understand that I am referring to just this document dated September 16th and not the purchase agreement which includes the revisions and the Clarification Letter that were eventually executed and closed?

A. I can't say I understand that there were those multiple versions. I can't say I --

Q. Sure. And I'm not trying to trick you up on contract stuff. I just want to

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1 understand when you went back and looked at
2 assets that were conveyed, were you looking at
3 this original document or this document as
4 modified by the Clarification Letter that we
5 looked at earlier which made revisions to this
6 document including changing the definition of
7 purchased assets?

8 A. I actually recall doing work with --
9 trying to have an understanding of the assets
10 purchased and excluded in this document or in a
11 document like this and actually not
12 understanding initially that there was a
13 clarification agreement, and then I don't
14 recall going back to sort of this in concert
15 with that Clarification Letter. I don't recall
16 doing that step.

17 Q. Did you ever have an opinion as to
18 whether -- or understanding as to whether the
19 unencumbered assets were part of the purchased
20 assets identified in Exhibit 1?

21 A. I'm sorry?

22 Q. Did you ever have an opinion or
23 understanding as to whether the unencumbered
24 clearance box assets we discussed previously
25

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1 were part of the purchased assets contained in
2 Exhibit 1?

3 MR. TAMBE: Object to the form.

4 Q. And you are welcome to flip to --

5 A. I had understood not based on
6 reading the document, but based on
7 conversations with the lawyers that the
8 unencumbered assets were part of the
9 transaction.

10 Q. When you say "part of the
11 transaction," they also were a part of the
12 original purchase agreement before it was
13 modified by the later letter agreement?

14 MR. TAMBE: Objection to the form of
15 the question.

16 A. I can't recall that I cared whether
17 it was in the original or in the clarifi- -- I
18 can't recall caring about that.

19 Q. Okay. Same question for the 15C3
20 assets. Do you recall if you ever had an
21 opinion or understanding as to whether those
22 assets were not only included in the ultimate
23 purchase transaction, but in the original APA?

24 A. I can't recall understanding whether
25

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1 they were -- if 15C3 is one in the same as
2 those repo assets, I can't remember all the
3 codes here, I can't recall whether they were --
4 whether it was in the original or in the
5 clarifi- -- I can't remember sort of worrying
6 about that or thinking that through.

7 Q. And if the 15C3 is the 769 million,
8 does that --

9 A. Oh, then that's not -- I don't
10 know -- I don't know the specificity of that
11 769 number.

12 Q. And did you ever make any effort to
13 go back and see if the derivatives and
14 associated collateral were a purchased asset as
15 part of the original APA?

16 A. I don't recall deriv- -- I don't
17 recall thinking about derivatives in
18 conjunction with an understanding of this
19 transaction.

20 Q. One way or the other?

21 A. Right.

22 Q. Did you attend any of the court
23 hearings? Let me clarify. In September.

24 A. Oh, in September?
25

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1 Q. Related to the sale transaction.

2 A. Not this sale transaction.

3 Q. So not the September 16th, 17th or
4 19th sale hearings?

5 A. No.

6 Q. Did you ever read the transcripts of
7 any of those hearings?

8 A. No.

9 Q. Have you spoken with anyone other
10 than your lawyers about this case?

11 A. When?

12 Q. In the say last two months.

13 A. No.

14 Q. When did you --

15 A. I'm sorry, other than the Phil Kruse
16 conversation I mentioned.

17 Q. When did you leave Alvarez?

18 A. I left Alvarez in late March, early
19 April. I can't remember specifically.

20 Q. Do you still have any contractual
21 relationship with them at all?

22 A. I do.

23 Q. What is the nature of that
24 relationship?
25

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2 MR. THOMAS: He can designate it
3 confidential.

4 THE WITNESS: Okay.

5 MR. TAMBE: If you don't want to go
6 into the numbers, you don't have to go into
7 the numbers. You can just describe
8 generally the relationship and take it one
9 question at a time.

10 THE WITNESS: Okay.

11 A. I have a note that they need to pay
12 me out on over time.

13 Q. When did that note arise?

14 A. December.

15 Q. What was the reason for this
16 arrangement?

17 A. I was a shareholder of Alvarez &
18 Marsal prior to that.

19 Q. So they are still paying you out
20 quarterly or monthly on this note?

21 A. Annually.

22 Q. Do you have any other contractual
23 relationship with them other than the fact that
24 they are paying you money?

25 A. Not sitting here today. Well,

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2 not -- other than that note and that agreement,
3 whatever that has in it.

4 MR. THOMAS: Let me take a short
5 break. I may be done.

6 THE VIDEOGRAPHER: The time is 1:02.
7 We are going off the record.

8 (Recess was taken from 1:02 to
9 1:03.)

10 THE VIDEOGRAPHER: The time is 1:03.
11 We are back on the record.

12 BY MR. THOMAS:

13 Q. Did you ever do any analysis of or
14 effort to understand how certain potential
15 exposures, potential liabilities, relating to
16 contracts that Barclays might assume, how those
17 estimates of potential exposure were
18 calculated?

19 MR. TAMBE: I will only caution the
20 witness to the extent he did any work in
21 that regard at the direction of in-house
22 counsel or other outside counsel, that's
23 work product and you should not be
24 testifying about that.

25 MR. THOMAS: You can identify that

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2 you did it. Then we won't go into any of
3 the substance.

4 THE WITNESS: Okay.

5 A. We did -- we did work -- my team
6 did -- Phil Gordon had counsel working with him
7 to work on those printer, you know, leases and
8 all these various things that were in that
9 process where Barclays would either take those
10 obligations, and if they didn't, then we had to
11 figure out whether on behalf of the estate we
12 would assume or reject those various contracts,
13 so there was a process under way under Bill and
14 that team to review that.

15 Q. Did you know that the week of the
16 sale hearing there were certain estimates made
17 as to the potential exposure, meaning potential
18 amount of liability that could be assumed under
19 those contracts if Barclays elected to assume
20 all the contracts?

21 MR. TAMBE: Objection to form.

22 A. I was aware that there was numbers
23 bandied around regarding accruals for severance
24 and bonus and other -- really those two pieces.
25 Those are the pieces I was aware of numbers

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2 being bandied around.

3 Q. The number for severance and bonus,
4 do you have any knowledge as to how those
5 estimates were calculated prior to closing?

6 A. I had no knowledge of how that was
7 calculated.

8 Q. Okay. You are just aware that there
9 was some estimate of potential liability for
10 severance and bonus, but you are not aware of
11 how -- who calculated it or how?

12 A. Correct.

13 MR. TAMBE: Objection to form.

14 Q. And do you have any knowledge as
15 to --

16 MR. THOMAS: Let me go ahead and
17 mark one more document. We will mark this
18 as Exhibit 566-B. This doesn't have Bates
19 stamps, but I will try to find the
20 production copy.

21 (Exhibit 566-B (subsequently
22 withdrawn), e-mail dated September 19,
23 2008, marked for identification.)

24 Q. This is an e-mail from Martin Kelly
25 on which you are copied. Do you recognize the

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2 document?

3 A. I recognize the document generally,
4 yes.

5 Q. Okay. And do you recall receiving
6 this document at or about the time of September
7 19th, 2008, or September 18th?

8 MR. TAMBE: I think you have asked
9 him about this document.

10 MR. THOMAS: I think you are right.

11 MR. TAMBE: I just didn't know if
12 there was a deeper plan here, but probably
13 not.

14 MR. THOMAS: This has all been a
15 test. Let me just -- what I am going to
16 do, I do have another follow-up question
17 about this document, but I am going to go
18 back to the exhibit.

19 MR. TAMBE: 561-B.

20 MR. THOMAS: This is why -- so we
21 are striking 566-B, because that's been
22 previously marked as 561-B.

23 Q. Mr. Fogarty, do you recognize
24 Exhibit 561-B that we discussed previously?

25 A. Yes.

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2 Q. And I believe you indicated you
3 recognize the attachment to the e-mail?

4 A. Yes, the general form of the thing I
5 recognize.

6 Q. Okay. And can you describe
7 generally what the attachment is?

8 A. My partner, David Coles, was just
9 keeping me copied on his attempt to track the
10 accounting of what we had, you know, pro forma
11 for the transaction.

12 Q. And how would you describe the
13 attachment itself?

14 A. I'll be honest, I never studied the
15 attachment. Well, I'm supposed to be honest
16 all day, but it's a figure of speech.

17 Q. That wasn't the first time.

18 A. Right, that wasn't the first time,
19 yes.

20 Q. And this is a document you would
21 have -- the attachment you would have received
22 on September 18th of 2008; is that right?

23 A. Say that again. This was a --

24 Q. This is a document, the attachment
25 that you received on September 18th, 2008?

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2 A. I'm sure I did.

3 Q. And if you would look at the first
4 page of the attachment, do you see the line
5 about a third of the way down that says
6 "payables"?

7 A. I'm on the assets page. You are on
8 the --

9 Q. Under Liabilities.

10 A. What line am I on?

11 Q. You are looking for payables under
12 Liabilities.

13 A. Oh, there. Okay.

14 Q. Okay. And do you see a line
15 entitled Bonus Payable and a line entitled Cure
16 Payments, Accounts Payable?

17 A. I do.

18 Q. Okay. And do you see -- reading
19 across, do you see the column Transaction
20 Adjustments?

21 A. I do.

22 Q. Do you see that there was a
23 transaction adjustment to both the bonus
24 payable and the cure amount accounts payable?

25 A. I do.

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2 Q. Were you aware that week that there
3 was a transaction adjustment?

4 MR. TAMBE: Objection to the form of
5 the question.

6 A. No.

7 Q. Do you know if your colleagues who
8 received this document were aware of that?

9 A. I do not know.

10 Q. Do you recall any discussions about
11 the transaction adjustment?

12 A. No.

13 Q. Do you have any understanding for
14 why that transaction adjustment was made for
15 either one of those two lines?

16 MR. TAMBE: Objection to the form of
17 the question.

18 A. No.

19 Q. What is your understanding of what a
20 transaction adjustment is?

21 A. An adjustment made in a transaction.

22 Q. Do you have a more specific
23 understanding than that, the purpose of a
24 transaction adjustment?

25 A. It could be many different purposes.

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I suppose.

Q. Do you know if -- do you know if Alvarez -- anyone at Alvarez discussed or investigated why these transaction adjustments were made?

MR. TAMBE: Objection to form.

A. No.

Q. You don't know one way or another whether somebody else at Alvarez was following up and asking questions about the transaction adjustment?

MR. TAMBE: When?

MR. THOMAS: At any time.

MR. TAMBE: Objection to the form, and I caution him not to disclose any privilege or work product that he may be aware of.

A. Give me your question again.

Q. Sure. Do you know if anyone else at Alvarez investigated or looked into why there was a transaction adjustment being made to these two items?

MR. TAMBE: Objection to form. Same instruction as before.

Fogarty - Highly Confidential

You can answer.

A. I'm not aware of people specifically trying to understand transaction adjustments.

Q. So they may or may not have, but you are not aware either way?

A. I am aware of people trying to understand 2 billion and 2 billion 250, but I am not aware of people trying to understand transaction adjustments.

Q. Okay. Well, those numbers come from a transaction adjustment; correct?

MR. TAMBE: Objection to the form of the question.

A. I don't know. I see the thing that says "transaction adjustments" like you do, but I don't know anything about that.

Q. So when you got this document, you don't recall following up on the nature of this transaction adjustment?

A. I did not study this document, no.

Q. Was someone -- was this someone -- was this issue and document more in Mr. Coles' bailiwick?

A. Yes.

Fogarty - Highly Confidential

Q. Okay. Did you have a general understanding that if Barclays elected at its discretion not to assume any of the contracts, that the liability for cure would be zero?

MR. TAMBE: Objection to the form of the question. Lack of foundation.

A. I'm sorry, one more time.

Q. Did you have an understanding that it was Barclays' discretion as to what contracts that it elected to assume or reject?

A. I actually thought about that in the context of copier leases and those kinds of things. I don't know that I was ever thinking about it in the context of severance and bonuses.

MR. THOMAS: Okay, thank you. I have nothing further.

MR. TECCE: I have one question, actually.

EXAMINATION BY

MR. TECCE:

Q. Mr. Fogarty, my name is James Tecce. I am an attorney at Quinn Emanuel. We represent the Creditors Committee.

Fogarty - Highly Confidential

Just going back, you mentioned a conversation with Michael Fazio of Houlihan. Correct? Do you remember when that conversation took place?

A. I remember it was -- I don't recall. It was around that time frame of that presentation to the Creditors Committee. I just can't remember --

Q. The October 2008 presentation?

A. Correct.

(Continued on next page to include jurat.)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)

HOLDINGS, INC., et al.,

Debtors.

-----X

HIGHLY CONFIDENTIAL DEPOSITION OF

ANSON FRELINGHUYSEN

New York, New York

Thursday, March 4, 2010

Reported by:
JOMANNA DeROSA, CSR
JOB NO. 27494

Page 2	Page 3
<p>1</p> <p>2</p> <p>3</p> <p>4 March 4, 2010</p> <p>5 9:40 a.m.</p> <p>6</p> <p>7</p> <p>8 HIGHLY CONFIDENTIAL Deposition of</p> <p>9 ANSON FRELINGHUYSEN, held at the offices of</p> <p>10 Boies Schiller & Flexner, LLP, 575 Lexington</p> <p>11 Avenue, New York, New York, pursuant to</p> <p>12 Notice, before Jomanna DeRosa, a Certified</p> <p>13 Shorthand Reporter and Notary Public of the</p> <p>14 States of New York, New Jersey, California</p> <p>15 and Arizona.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4</p> <p>5 JONES DAY, LLP</p> <p>6 Attorneys for Lehman Brothers, Inc.</p> <p>7 222 East 41st Street</p> <p>8 New York, New York 10017-6702</p> <p>9 BY: JENNIFER L. DEL MEDICO, ESQ.</p> <p>10</p> <p>11</p> <p>12 BOIES SCHILLER & FLEXNER, LLP</p> <p>13 Attorneys for Barclays</p> <p>14 5301 Wisconsin Avenue, N.W.</p> <p>15 Washington, D.C. 20015</p> <p>16 BY: JONATHAN SHAW, ESQ.</p> <p>17</p> <p>18</p> <p>19 HUGHES HUBBARD & REED, LLP</p> <p>20 Attorneys for SIPA Trustee</p> <p>21 One Battery Park Plaza</p> <p>22 New York, New York 10004</p> <p>23 BY: SETH D. ROTHMAN, ESQ.</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2 A P P E A R A N C E S (Continued):</p> <p>3</p> <p>4</p> <p>5 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP</p> <p>6 Attorneys for the Creditors Committee</p> <p>7 51 Madison Avenue, 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 BY: ERIC M. KAY, ESQ.</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 JOSH LIPSON, Videographer</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 start of tape No. 1 of the videotaped</p> <p>4 deposition of Anson Frelinghuysen in the</p> <p>5 matter In re Lehman.</p> <p>6 Today's date is March 4th, 2010, at</p> <p>7 approximately 9:40 a.m.</p> <p>8 Will the court reporter please</p> <p>9 swear in the witness.</p> <p>10 A N S O N F R E L I N G H U Y S E N, called as</p> <p>11 a witness, having been duly affirmed by a</p> <p>12 Notary Public, was examined and testified</p> <p>13 as follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. SHAW:</p> <p>16 Q. Mr. Frelinghuysen, my name is</p> <p>17 Jonathan Shaw. We met off the record a moment</p> <p>18 ago. I'm with Boies, Schiller & Flexner, and I</p> <p>19 represent Barclays Capital, Inc.</p> <p>20 You're an associate of Hughes</p> <p>21 Hubbard & Reed. Is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you were an associate of Hughes</p> <p>24 Hubbard & Reed in September of 2008. Is that</p> <p>25 right?</p>

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 A. I was.

3 Q. How long at law school were you?

4 A. I graduated from Brooklyn Law
5 School in June of 2007.

6 Q. And you've been at Hughes Hubbard
7 your entire career?

8 A. I have been.

9 Q. Since September 2008 you've been
10 working on the SIPA liquidation of Lehman
11 Brothers, Inc. Is that correct?

12 A. Yes.

13 Q. When were you first assigned to
14 that matter?

15 A. I was first assigned to the Lehman
16 Brothers, Inc. matter on September 13th.

17 Q. And how did you learn on
18 September 13th that you would be working on that
19 matter?

20 A. I received a call from Mr. Margolin
21 that he would like for me to come into the office
22 the next morning.

23 Q. "The next morning" being Saturday
24 the 14th?

25 A. Sunday the 14th.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 Q. Sunday the 14th. Okay.

3 And did you get any further
4 instruction in the course of that phone call?

5 A. No.

6 Q. Can you give me an overview of what
7 you did in connection with that matter between
8 starting work on September the 14th and the
9 closing of the transaction on the morning of
10 September 22nd.

11 MR. ROTHMAN: You can give him a
12 general overview without revealing any
13 privileged information.

14 A. As a first-year associate, I
15 prepared some of the documents associated with the
16 filing of the SIPA liquidation. I attended the
17 district court hearing in which Lehman Brothers,
18 Inc. was placed in liquidation. I also attended
19 the closing of the transaction between Lehman
20 Brothers, Inc. and Barclays.

21 Q. I take it, then, that you did not
22 attend the September 19th sale hearing?

23 A. I was -- I was at the
24 September 19th sale hearing before it began.

25 Q. And you left to go where?

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 A. There were other documents that
3 needed to be prepared in connection with the
4 Trustee's appointment.

5 Q. And I take it you also did not
6 attend the September 17th hearing?

7 A. I did not attend that hearing.

8 Q. Over the weekend following the sale
9 hearing, did you participate in any discussions
10 concerning the documentation of the sale
11 transaction?

12 A. I did, yes.

13 Q. Setting aside any purely internal
14 discussions between you and the Trustee or the
15 Trustee's lawyers at Hughes Hubbard, tell me what
16 discussions concerning the documentation with the
17 transaction you were involved in.

18 A. Primarily I was there to discuss
19 the signing of a multitude of signature pages for
20 the related documents for the closing of the
21 transaction.

22 Q. So that would be early on the
23 morning of the 22nd?

24 A. No. Most of the signature pages
25 were signed on Saturday, September 20th. Still

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 others were signed on Sunday, September 21st.

3 Q. Were any signed on the morning of
4 the 22nd?

5 A. If they were signed on the morning
6 of the 22nd it would have been, you know, between
7 midnight and 2:00 a.m. And actually, there were
8 further documents signed later in the morning.

9 Q. Later in the morning of the 22nd?

10 A. Yes.

11 Q. What documents were signed later in
12 the morning of the 22nd?

13 A. The services and settlement
14 agreement was signed in the morning, as well as
15 the DTCC letter.

16 Q. Were you physically present at the
17 offices of Weil Gotshal at any time during that
18 weekend?

19 A. I was -- yes, I was.

20 Q. How much of the weekend were you
21 present at Weil Gotshal?

22 A. I was present for large portions of
23 both Saturday, Sunday, and I was there from
24 midnight Monday morning until about 8:00 a.m.

25 Q. Tell me what you were doing there.

3 (Pages 6 to 9)

Page 10	Page 11
<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I was monitoring the closing</p> <p>3 proceedings for the Trustee and reporting back</p> <p>4 information as necessary.</p> <p>5 Q. When you say you were "monitoring</p> <p>6 the closing proceedings," what do you mean?</p> <p>7 A. There were a number of people there</p> <p>8 discussing issues related to the closing, and I</p> <p>9 would listen to them and let other attorneys at</p> <p>10 HHR and the Trustee know what was going on.</p> <p>11 Q. And when you say "issues related to</p> <p>12 the closing," do you mean substantive issues or</p> <p>13 just logistical issues about how the documents</p> <p>14 were going to be signed, or both?</p> <p>15 A. There would be both document</p> <p>16 signing and logistical issues that really were not</p> <p>17 relevant. That was just, what does my signature</p> <p>18 block look like, you know, that kind of thing,</p> <p>19 which is not relevant.</p> <p>20 Primarily, the discussion was</p> <p>21 between Barclays and JPMorgan Chase over an issue</p> <p>22 that they were having that was holding up the</p> <p>23 closing.</p> <p>24 Q. And when were those discussions</p> <p>25 taking place?</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Those discussions took place all</p> <p>3 day Saturday, all day Sunday and into Monday</p> <p>4 morning.</p> <p>5 Q. Were you involved -- were there any</p> <p>6 other representatives of the Trustee at Weil</p> <p>7 Gotshal?</p> <p>8 A. Yes. Mr. Kiplok arrived around</p> <p>9 4:00 or 5:00 on Sunday the 21st.</p> <p>10 Q. 5:00 a.m. or p.m.?</p> <p>11 A. Oh, p.m.</p> <p>12 Q. And how long did he stay?</p> <p>13 A. Mr. Kiplok and I left together</p> <p>14 around 8:00 a.m. on Monday morning.</p> <p>15 Q. Why did you sign the documents</p> <p>16 rather than Mr. Kiplok or someone else more</p> <p>17 senior?</p> <p>18 A. Most of the documents were signed</p> <p>19 before Mr. Kiplok got there.</p> <p>20 Q. Apart from the -- strike that.</p> <p>21 You talked about discussions</p> <p>22 between Barclays and JPMorgan that stretched from</p> <p>23 Saturday through some point on Monday.</p> <p>24 Were you present for any portion of</p> <p>25 those discussions?</p>
Page 12	Page 13
<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Those discussions were behind</p> <p>3 closed doors when they were between the parties</p> <p>4 themselves, and they then made various</p> <p>5 presentations to the larger group, which I would</p> <p>6 have been present for.</p> <p>7 Q. How many such presentations do you</p> <p>8 recall?</p> <p>9 A. There were two or three or -- two</p> <p>10 or three of them.</p> <p>11 Q. And who did the presenting?</p> <p>12 A. Mr. Cox did some of the presenting,</p> <p>13 people who -- you know, I didn't know who they</p> <p>14 were at the time.</p> <p>15 Q. Representatives of JPMorgan?</p> <p>16 A. Representatives of JPMorgan,</p> <p>17 representatives of Barclays, both lawyers and</p> <p>18 business individuals.</p> <p>19 Q. What was your understanding of the</p> <p>20 substance of the issue that was being discussed</p> <p>21 between JPMorgan and Barclays?</p> <p>22 A. I understood from their discussions</p> <p>23 to have been a holdup in collateral transfers,</p> <p>24 with assets stuck at JPMorgan that were</p> <p>25 purportedly due to Barclays.</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Would that be the \$7 billion?</p> <p>3 A. Yes, that's -- I recall that being</p> <p>4 one of the issues that was discussed.</p> <p>5 Q. What other issues do you recall</p> <p>6 being discussed?</p> <p>7 A. That was the primary kind of</p> <p>8 blockage that they were unable to resolve for</p> <p>9 quite some time.</p> <p>10 Q. Can you tell me anything about what</p> <p>11 was discussed during these presentations, as much</p> <p>12 detail as you can recall?</p> <p>13 A. You know, at the presentations,</p> <p>14 some of them were at the beginning where they</p> <p>15 presented the issue, and then some of them were</p> <p>16 later when they had reached a -- what they</p> <p>17 believed to be a resolution to the issue.</p> <p>18 Yes. Since they didn't necessarily</p> <p>19 affect what we were doing there, I don't remember</p> <p>20 the details of them.</p> <p>21 Q. When Mr. Kiplok was present on</p> <p>22 Sunday going through to Monday morning, what were</p> <p>23 his responsibilities as compared with your</p> <p>24 responsibilities?</p> <p>25 A. Mr. Kiplok had other -- I mean, I</p>

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 or late afternoon/early evening when I was told
3 that they would not be closing that night because
4 they were working on a few other matters,
5 primarily what had been discussed was the
6 JPMorgan/Barclays issue, but also he said there
7 was this clarification letter.

8 And I said that we should probably
9 have a copy of that.

10 Q. And what did he tell you?

11 A. He didn't give me a copy.

12 Q. Do you know if there was a copy to
13 give you at that point?

14 A. I didn't know that.

15 Q. Did you later learn that there was
16 a copy to give you?

17 A. I've seen documents that have, you
18 know, earlier dates.

19 Q. You ultimately did receive various
20 drafts of the clarification letter. Is that
21 correct?

22 A. I did receive various drafts of it,
23 yes.

24 Q. Over the course of the weekend?

25 A. Beginning on Sunday evening, yes.

Page 20

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 signature pages to all the ancillary documents to
3 the APA in order and signed in triplicate or
4 quadruplicate as necessary.

5 Q. Anything else of significance that
6 you did on Saturday?

7 A. No. When I left in the evening I
8 gave my contact details to Ms. Clausen and
9 Mr. Gruszecki in case they needed to contact me in
10 the event that the deal would actually be able to
11 close that night, and I could sign any of the
12 final documents.

13 Q. What time did you leave?

14 A. I think I left at 6:30 or 7:00.

15 Q. Any additional activity that
16 evening or that night?

17 A. Yes.

18 Q. What happened that night?

19 A. I communicated with attorneys from
20 Hughes Hubbard.

21 Q. Did you return to Weil Gotshal on
22 Sunday?

23 A. I did, yes.

24 Q. At what time?

25 A. I arrived later that day, probably

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 Q. You mentioned PIK notes.

3 What do you mean by the "PIK
4 notes"?

5 A. PIK notes are the payment-in-kind
6 notes; that I understood the holding company moved
7 all the subsidiaries out from underneath LBI in
8 return for a PIK note to be valued at a later
9 date, and that PIK note was to be delivered to the
10 Trustee.

11 Q. Aside from the discussion you've
12 already testified about that involved both
13 Mr. Messineo and Ms. Fife concerning the 15c3-3
14 account, what other discussions did you have on
15 Saturday with Ms. Fife?

16 A. With Ms. Fife?

17 Q. Yes.

18 A. None.

19 Q. What discussions did you have with
20 Mr. Gruszecki or Grabowski, the gentleman from
21 Cleary Gottlieb?

22 A. That -- those conversations would
23 have been three-way with Ms. Clausen as we
24 discussed the signature pages. Those two
25 associates were primarily working on getting the

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 between 11:00 and 12:00.

3 Q. Okay. And what did you do on
4 Sunday?

5 A. Sunday was similar to Saturday. We
6 re-signed some of the documents with the proper
7 date because it was -- now another day had passed.
8 I monitored proceedings again on behalf of the
9 Trustee and reported back any developments.

10 Q. And when you say you "monitored"
11 the proceedings, what proceedings are you talking
12 about?

13 A. There were people in and out of
14 various rooms, and I was in the hallway. I was
15 listening.

16 Q. And what did you hear when you
17 listened?

18 A. Primarily discussions regarding the
19 Barclays transaction with -- and the issue with
20 JPMorgan.

21 Q. Anything about the terms of the
22 transaction?

23 A. The terms of the Barclays
24 transaction?

25 MR. ROTHMAN: Which transaction?

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 Q. The sale transaction.

3 A. No, that was -- that was not really
4 being discussed.

5 Q. Anything concerning the terms of
6 the clarification letter that you were involved in
7 discussing on Sunday?

8 A. Yes. We would have discussed the
9 clarification letter beginning much later on
10 Sunday night.

11 Q. And who would you have had those
12 discussions with?

13 A. Mr. Kiplok and I went into a room
14 with Mr. Messineo, Mr. Murgio. Both of those
15 individuals are from Weil. Mr. McLaughlin, an
16 attorney from Cleary Gottlieb. And there were a
17 few other associates in both of those firms
18 sitting in the perimeter of the office. And, you
19 know, we reviewed the clarification letter.

20 Q. About what time did that -- did
21 that occur?

22 A. We were in that room probably
23 beginning around 1:00 a.m. on Monday morning
24 through until about 6:00 or 7:00 in the morning.

25 Q. Tell me in as much detail as you

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 can what you remember about that session between
3 1:00 a.m. and 6:00.

4 A. Primarily, Mr. Messineo or
5 Mr. Murgio, both of whom had laptops, would make
6 changes to the clarification letter as they were
7 discussed between Mr. Murgio and Mr. Messineo and
8 Mr. McLaughlin. Mr. McLaughlin would suggest
9 various changes. Mr. Murgio would discuss it with
10 him. They would then make or not make the change.

11 Q. Did you or Mr. Kiplok offer any
12 input into this process?

13 A. No. We were reading along while
14 they made suggestions to the document. We were
15 not familiar with the document that they had been
16 drafting together, so we, you know, let them
17 finish it.

18 Q. Do you recall any of the
19 substantive issues that were discussed during that
20 meeting?

21 A. We discussed certain changes to the
22 customer account section, which is what we
23 primarily were focused on. The transfer of
24 customer accounts. There was a section about some
25 sort of insurance liability that remained after

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 the fact and where that cash would go.

3 You know, those were the two areas
4 I remember discussing.

5 Q. Do you remember that there was
6 discussion about other issues; you just don't
7 remember what it was -- or what they were?

8 A. They may have discussed other, you
9 know, parts. Those were the ones I remember. It
10 was five hours.

11 Q. Did you or Mr. Kiplok ask any
12 questions during the course of that session?

13 A. I don't recall any specific
14 questions.

15 Q. Were you excluded from any portion
16 of the discussions?

17 A. There were a lot of different rooms
18 in which people were having a lot of different
19 conversations. We were not present at all
20 conversations regarding the clarification letter.

21 Q. Did anyone ever tell you that you
22 were not welcome at any particular discussion?

23 A. Certainly we were not welcome at
24 the discussions between JPMorgan and Barclays.

25 Q. Any other discussions you were not

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 welcome at?

3 A. Those people went into separate
4 rooms to have private conferences with their
5 attorneys with themselves, and we were not welcome
6 at those.

7 Q. Any multilateral discussions in
8 which you were not welcome?

9 A. Not that I know of. But people
10 went into different rooms all the time.

11 Q. Did you attend or participate in
12 any discussion of the terms of the DTCC letter?

13 A. I did.

14 Q. When did those discussions take
15 place?

16 A. I believe those discussions were
17 parallel to the clarification letter discussions,
18 and then probably I started looking at it around
19 6:00 in the morning.

20 Q. When you say those discussions
21 "were parallel to the clarification letter
22 discussions," what do you mean?

23 A. The first letter that I received
24 was at 6:00 a.m., and it had already been written,
25 so it had to have been written while I was working

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 the sale transaction over that weekend?
3 A. I did.
4 Q. Okay. When was that?
5 A. There was a presentation to the
6 larger group that had gathered at Weil Gotshal on
7 Sunday night with various individuals from the Fed
8 and the SEC on the phone.
9 Q. What time Sunday night was that?
10 A. That call remained open from about
11 4:00 p.m. until 1:00 a.m.
12 Q. And were you on that call
13 constantly from 4:00 p.m. until 1:00 a.m.?
14 A. When I was in the room in which the
15 line was open. There was a lot of down time on
16 that call.
17 Q. Okay. Do you know who else was on
18 that call for the Trustee?
19 A. Mr. Kobak, Mr. Kiplok, the Trustee.
20 Q. Kobak, Kiplok and the Trustee?
21 A. You know, it's impossible to say
22 when people were on and off the call. It lasted
23 for a long time.
24 MR. ROTHMAN: He was just asking
25 you to clarify your prior answer.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 to be paid to DTCC.
3 Q. What did paying the collateral to
4 DTCC have to do with the JPMorgan/Barclays issue?
5 A. It was consideration, not
6 collateral.
7 Q. Okay. What did payment of the
8 \$250 million of consideration to DTCC have to do
9 with the JPMorgan/Barclays issue?
10 A. I don't know.
11 Q. But your understanding was it was
12 somehow related to that?
13 A. I understand if the
14 JPMorgan/Barclays issue was holding up the
15 transaction, that there would be some relation.
16 Q. You said a moment ago that the SEC
17 and the Fed were adamant that the deal be closed
18 before business opened on Monday.
19 What's your basis for saying that?
20 A. I recall voices on the telephone
21 saying, Please resolve this issue before the
22 markets open on Monday.
23 Q. Anything else?
24 A. Not that I recall specifically.
25 Q. Do you recall anything else about

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 MR. SHAW: Yeah. I just wasn't --
3 MR. ROTHMAN: It wasn't clear when
4 you said Kobak, Kiplok, whether they were --
5 MR. SHAW: For the Trustee or also
6 with the Trustee.
7 MR. ROTHMAN: -- for the Trustee or
8 also with.
9 A. Oh. Also with.
10 Q. Tell me in as much detail as you
11 can recall anything of substance discussed on that
12 call.
13 A. Again, the focus of that call was
14 the Barclays/JPMorgan issue and resolution of
15 that. The SEC and the Fed were adamant that the
16 deal be closed before business opened on Monday
17 and that those two parties reach a resolution so
18 the deal as discussed on Friday night, the sale
19 hearing, would close.
20 And primarily they went through
21 their resolution of the issue. And one part of
22 that resolution that I recall was that the
23 \$250 million of collateral that originally was
24 going to be paid to LBI was going to be paid to --
25 not collateral; sorry -- consideration was going

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 what was discussed on that call that was open from
3 about 4:00 p.m. until about 1:00 a.m.?
4 A. No, not in detail.
5 Q. Approximately how much of that call
6 were you present for between 4:00 p.m. and
7 1:00 a.m.?
8 A. Between 4:00 p.m. and 1:00 a.m. the
9 call was probably active for two and a half to
10 three hours, and I was probably present for all of
11 the active moments of it.
12 Q. And what were you doing when it was
13 inactive?
14 A. We had various side conversations
15 with Hughes Hubbard attorneys, and we had -- that
16 was pretty much it.
17 Q. Did you or any other representative
18 of the Trustee request any changes to any of the
19 deal documents over the course of that weekend?
20 A. Yeah. We had a lot of changes to
21 the signature blocks of the documents. The DTCC
22 letter we did have some substantive changes to.
23 Q. You did or you did not have?
24 A. Did, positive.
25 Q. Okay. What substantive changes did

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 the Trustee request in the DTCC letter?
3 A. I don't recall what they were. I
4 just remember that there were other discussions
5 going on.
6 Q. And you requested changes.
7 Were those changes made?
8 A. I don't know.
9 Q. Who requested the changes on behalf
10 of the Trustee?
11 A. Mr. Kobak and Mr. Kiplok.
12 Q. And you don't recall what any of
13 those requested changes were?
14 A. Not at this time.
15 Q. And you don't know whether the
16 changes that were requested, whatever they were,
17 were actually incorporated in the final letter; do
18 you?
19 A. If we signed the letter, they must
20 have been acceptable to us.
21 MR. ROTHMAN: Well, don't guess.
22 A. No, I don't know what the changes
23 were and whether they were incorporated.
24 Q. Do you know whether any requests
25 for changes were made orally or in writing?

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2 Q. While you were there over the
3 weekend, did anyone ever state or suggest the deal
4 as documented in the final version of the
5 clarification letter had not been approved by the
6 Court?
7 A. My understanding of the deal
8 documents was that they reflected what had been
9 presented to the Court on Friday night, and that
10 the reason that I was signing was because no
11 substantive changes were being made.
12 MR. SHAW: I'll show you what's
13 been previously marked as Exhibit 25 in this
14 case.
15 Q. I'm just going to ask if you
16 recognize that as the clarification letter that
17 you signed on the Trustee's behalf?
18 MR. ROTHMAN: Objection to the
19 form.
20 Q. Do you recognize that document?
21 A. I do recognize this document.
22 Q. Did you -- and what is the document
23 you recognize?
24 A. The document appears to be the
25 clarification letter.

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2 A. Do you mean via e-mail?
3 Q. E-mail, somebody marking up an
4 agreement; anything like that?
5 A. You know, we were not physically
6 present with DTC attorneys or themselves, so I
7 would -- my recollection is that they would be
8 oral requests.
9 Q. And you were not personally
10 involved in any discussions concerning the
11 contents of the DTCC letter. Is that right?
12 A. Not with DTCC, no.
13 Q. With anyone other than internally
14 at Hughes, Hubbard & Reed?
15 A. My discussions about the DTCC
16 letter were with Mr. Kiplok.
17 Q. Did the Trustee -- aside from
18 changes you've mentioned to the signature block,
19 perhaps, did the Trustee or any of its
20 representatives request changes to the
21 clarification letter at any time?
22 A. I don't know what they did.
23 Q. You're not aware of it if they did?
24 A. I'm not aware of anything else than
25 what I was there for on Monday morning.

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2 Q. And did you sign the clarification
3 letter?
4 A. I signed the signature page that's
5 attached to this letter, yes.
6 Q. Okay. And you did so on behalf of
7 the -- of James Giddens, Trustee for the SIPA
8 liquidation of Lehman Brothers, Inc.?
9 A. That's correct.
10 Q. When did you sign that signature
11 page?
12 A. I signed the signature page on the
13 late evening of Sunday, September 21st or in the
14 early morning of September 22nd, probably before
15 1:00 or 2:00 a.m.
16 Q. And where were you physically when
17 you signed that page?
18 A. I believe at this point for the
19 signing of this one, I went to some internal
20 office at Weil Gotshal where Mr. Gruszecki and
21 Ms. Clausen had been set up once the larger office
22 they had been using had been taken for other
23 purposes. That was the room where all the
24 signature pages were being kept in those accordion
25 files.

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Q. And when they gave it to you to sign, was there just a signature page or was there an agreement attached to the signature page when you were signing it?

A. It was just the signature page; no agreement.

Q. Was there at some point any further authorization you were required to give before they could use the signature page that you signed?

A. The deal was closed around 8:00 a.m. on Monday morning when the signature pages were released by the various parties.

Q. And how was -- how was the -- how were the signature pages that you signed released by the Trustee?

A. We were in another conference room at Weil Gotshal, and all the documents had been signed and reached and the funds transferred.

Q. Let me unpack that for a moment. You were in a conference room at Weil Gotshal at around 8:00 a.m. Monday morning. Is that correct?

A. That's correct.

Q. And who else was in this conference

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room?

A. More people than I could remember or describe. It was not the larger conference room. It was kind of small, and it was full.

Q. Representatives of Barclays?

A. There were representatives of Barclays, of JPMorgan, of -- you know, there were Cleary lawyers, Weil lawyers, Shearman lawyers; a lot of people.

Q. Anyone for the creditors committee?

A. I recall that there were members of the creditors committee there during the course of -- earlier in the evening. I assumed they didn't go home.

Q. And so you're in this room with representatives of various parties.

And did they have final versions of all the contract documents?

A. No, not at all.

Q. So how was it that the documents were -- or that the signature pages were released?

I mean, did a representative, for example, of the Trustee say, "Okay, our signature pages are now released," or what happened?

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A. I don't actually recall that moment, but --

Q. But in some way, was it you or some other representative of the Trustee indicated that it was okay to release the signature pages?

A. I didn't.

Q. Do you know who did?

A. No, I can't recall.

Q. Had you read a final version of the clarification letter at that point?

A. I had seen drafts of the clarification letter and had read what I thought was the final version, yes.

Q. And when you say "what I thought was the final version," do you still believe that was the final version that you read?

A. I assumed there were no changes made after we wrapped up.

Q. If you'd take a look at the first page of Exhibit 25, and particularly the paragraph that is at the bottom of that page, No. 1(a)(ii).

Do you see that?

A. Yes, I see that paragraph, yes.

Q. And you'll see that that paragraph

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references a Schedule A and a Schedule B.

Do you see that?

A. I do see the references to Schedule A and Schedule B.

Q. Had you seen those references prior to signing this?

A. Had I seen those references?

Q. Yes.

A. Yes, I had.

Q. Did you make any effort to examine Schedule A or Schedule B?

A. These schedules were never delivered to us for review.

Q. When you say they were not "delivered to us for review," do you mean they were never delivered to the Trustee for review?

A. That's -- I never received a copy of them.

Q. And when you say "never," I take it you mean that weekend?

A. That's correct.

Q. Do you know whether anyone else, a representative of the Trustee, ever received a copy of those this weekend -- that weekend?

11 (Pages 38 to 41)

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A. I don't know what other people received.

Q. Do you know if anyone representing the Trustee ever asked for copies of either Schedule A or Schedule B?

A. I did not.

Q. And you don't know whether anyone else did?

A. I don't know.

Q. Are you aware that final versions of Schedule A and Schedule B were filed with the Court on September 30th, 2008?

A. I'm -- am I aware of that?

Q. Yes.

A. No.

Q. Did you ever have occasion to review the final filed versions of Schedule A or Schedule B?

A. I have seen them.

Q. In what context?

A. As .pdf documents.

Q. When approximately did you see them?

A. At some point in the months

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following.

Q. And for what purpose were you looking at them?

A. To transmit them. They -- I was just passing through. They weren't really something that I could read.

Q. To whom did you transmit them?

A. To Deloitte.

Q. And when you transmitted them to Deloitte, did you transmit them with any instruction?

MR. ROTHMAN: That's a yes-or-no question.

A. No.

Q. Were you involved in the process of preparing those final versions of Schedule A and Schedule B?

A. No.

Q. Do you know if any representative of the Trustee was involved in preparing the final versions of Schedule A or Schedule B?

A. I do not know.

Q. Do you know if anyone representing the Trustee ever requested to be involved in the

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preparation of those final versions of Schedule A and Schedule B?

A. I do not know.

Q. Other than the Trustee and his counsel, have you ever discussed the preparation or contents of Schedule A or Schedule B with anyone?

A. No.

Q. Are the terms "636 box" and "074 box" familiar to you?

A. I don't normally refer to them that way.

Q. Okay.

MR. ROTHMAN: That wasn't what he asked you, but go ahead.

Q. If I were to say the 636 box, what would your understanding of that be?

A. The DTCC participant account of LBI's.

Q. Okay. And the 074 box, what would your understanding of that be?

A. It's another participant account member of LBI's.

Q. At the DTCC?

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A. At DTCC.

Q. When did you learn that?

A. I learned that on Monday, September 22nd or Tuesday, September 23rd.

Q. And how did you come to learn that?

A. I began the process of the customer account transfers which involved the transfer of assets to the benefit of those customers, and the assets had to transfer through DTC.

Q. And did someone explain to you what the 636 and 074 boxes were?

A. Yes.

Q. Who would that be?

A. Mr. Ullman at Lehman Brothers, Inc., who became a Barclays Capital employee.

Q. Do you know when Mr. Ullman became a Barclays Capital employee?

A. I assume he became a Barclays Capital employee the moment that the transaction changed.

MR. SHAW: Can we take a short break. This is a logical stopping point.

THE VIDEOGRAPHER: The time is 10:29. We are going off the record.

12 (Pages 42 to 45)

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2 (Recess taken.)

3 THE VIDEOGRAPHER: The time is
4 10:40. We are back on the record.

5 Q. Mr. Frelinghuysen, could you please
6 give me an overview of what you did in connection
7 with this matter between the closing and the end
8 of September 2008.

9 A. Between the closing on
10 September 22nd through the end of September 2008,
11 I was -- I worked primarily on the transfer of
12 customer assets to Neuberger Berman, Barclays and
13 Prime Brokerage.

14 Q. Anything else?

15 A. I worked on various other kind of
16 administrative matters within, you know, the
17 liquidation.

18 Q. And what was entailed by the
19 transfer of customer assets to Neuberger Berman,
20 Barclays and the Prime Brokerage?

21 A. Primarily it involved authorization
22 to DTC to transfer customer assets from LBI's
23 accounts at DTC to accounts -- other participant
24 accounts at DTC, Barclays, Ridge, or whomever the
25 Prime Brokerage people designated.

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2 entity you were interacting with?

3 MR. ROTHMAN: Objection to the
4 form.

5 A. The purpose remained to have
6 custodial banks, such as DTC or any of the others
7 around the world, transfer customer assets as
8 needed.

9 Q. And in order to accomplish these
10 asset transfers, did you understand that you had
11 been invested with some measure of authority to
12 act on the Trustee's behalf in his dealings -- or
13 in your dealings with these custodial entities?

14 A. Yes.

15 Q. And what did you understand the
16 scope of the authority you had been given to be?

17 A. That I should encourage or instruct
18 the banks to transfer LBI's assets that were
19 related to customers as necessary.

20 Q. Do you understand yourself to have
21 more or less -- strike that.

22 Did you understand yourself to have
23 more, less or the same authority in dealing with,
24 say, JPMorgan as you did in dealing with the DTC
25 or the OCC?

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2 Q. And you had other responsibilities
3 as well over the course of that week or so. Is
4 that correct?

5 A. I worked on some other matters,
6 yes.

7 Q. Were you involved with approving
8 payments from the LBI estate?

9 A. "Approving payments"? I'm not
10 sure --

11 MR. ROTHMAN: Objection to the
12 form.

13 A. I don't know what that means.

14 Q. Were the request -- strike that.

15 What did you understand the limits
16 on your authority to act for the Trustee were?

17 A. I was --

18 MR. ROTHMAN: Objection to the
19 form.

20 Q. You can answer.

21 A. I was there to transfer customer
22 assets and to facilitate those movements through
23 the holders of those securities.

24 Q. In your understanding, did the
25 scope of your authority differ depending on which

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2 MR. ROTHMAN: Objection to the
3 form.

4 A. My authority with the DTC and JPMC
5 with respect to LBI's accounts at those banks
6 where customer assets were stored was identical.

7 Q. You were on site in Jersey -- at
8 Lehman Brothers' Jersey City facility for much of
9 that period. Is that right?

10 A. It's been -- yes. I was at
11 70 Hudson Street.

12 Q. Okay. Was Mr. Kiplok there as
13 well?

14 A. No, he was not.

15 Q. Were there any other
16 representatives of the Trustee on site in
17 Jersey City?

18 A. In what time period?

19 Q. Between closing and the end of
20 September.

21 A. No.

22 Q. Were there any other
23 representatives of the Trustee who were involved
24 in authorizing the transfers of assets from the
25 DTC and OCC and JPMorgan custodial accounts during

13 (Pages 46 to 49)

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2 that time period?

3 A. There were.

4 Q. Who were they?

5 A. Mr. Kiplok.

6 Q. How were responsibilities allocated
7 between you and Mr. Kiplok during that period?

8 A. I worked most entirely with DTCC
9 and with JPMC after Mr. Kiplok had established
10 those channels of dealings.

11 Q. And he had responsibility for what,
12 as you understood it?

13 A. He did the JPMC transfers
14 initially, and I took over for those since I was
15 located at the operations center. And that's it.

16 Q. How much supervision did you
17 receive from more senior lawyers or other
18 representatives of the Trustee during that week?

19 MR. ROTHMAN: Objection to the
20 form.

21 Q. You can answer.

22 A. I received general instruction to
23 transfer customer assets as they were presented to
24 me.

25 Q. One of the responsibilities you had

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2 that week was to determine if proposed transfers
3 of assets should be authorized by the Trustee or
4 denied. Correct?

5 A. My role was to assure that the
6 assets that Barclays' personnel were asking be
7 transferred got transferred to the extent they
8 were customer assets.

9 Q. When you say to the extent that
10 they were customer assets, who -- strike that.
11 Who gave you your instructions
12 about what your role was?

13 A. About what my role was?

14 Q. Yes.

15 A. Hughes Hubbard attorneys.

16 Q. Which Hughes Hubbard attorneys
17 particularly?

18 A. Mr. Kobak, Mr. Kiplok and the
19 Trustee.

20 Q. As exactly as possible, what were
21 you told was your role?

22 MR. ROTHMAN: I instruct you not to
23 answer that question.

24 Q. In deciding which transfers to
25 approve and which to deny approval to, how did

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2 you -- how did you do that?

3 MR. ROTHMAN: Again, you can give a
4 general idea, but please don't reveal any
5 privileged communications you may have had
6 with other lawyers at Hughes Hubbard or with
7 the Trustee.

8 A. Okay. I instructed Mr. Ullman that
9 when he had a request for me to transfer assets,
10 that he had to state where they were going and for
11 what purpose, and that that purpose needed to be a
12 customer transfer.

13 Q. When did you have this discussion
14 with Mr. Ullman?

15 A. That discussion would have taken
16 place on September 23rd, which is a Tuesday.

17 Q. What time on September 23rd?

18 A. I believe I arrived at his offices
19 at the 70 Hudson location around 11:00 a.m. We
20 had numerous conferences throughout the day going
21 over, you know, what needed to be done, how it
22 would be done. And in the course of those
23 conversations, that discussion happened.

24 Q. When in the course of those
25 discussions did that conversation happen?

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2 A. It would have happened multiple
3 times in the course of that conversation.

4 Q. And tell me as exactly as you can
5 precisely what you instructed Mr. Ullman with
6 respect to -- with respect to requesting transfers
7 of assets.

8 A. That I needed appropriate
9 instructions as to where the assets would be going
10 and where they would be coming from. I needed
11 appropriate contact information. I needed
12 confirmation from him that those assets were
13 related to customers.

14 Q. What were your exact words to
15 Mr. Ullman?

16 A. I don't recall.

17 Q. Did you put any of these
18 instructions in writing?

19 A. Not to Mr. Ullman.

20 Q. To anyone?

21 A. On certain occasions where I
22 received instructions that did not match what I
23 needed to have them, I would refuse the
24 instructions and address the short-falling.

25 Q. Do you recall any specific examples

14 (Pages 50 to 53)

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2 of situations like that?
3 A. I do not. I just recall that it
4 happened more than once.
5 Q. With Mr. Ullman or with others?
6 A. With Mr. Ullman or any of his
7 personnel working for him.
8 Q. And who were the personnel working
9 for him that you're thinking of?
10 A. My primary people with whom I
11 worked on those customer account transfers and the
12 transfer of customer assets would have been
13 Mr. Fondacaro, Mr. Gallagher and Mr. Borzi.
14 Mr. Crispino was -- worked for them and was also
15 involved.
16 Q. What about Laura Vecchio; did you
17 have any contact with her during that period of
18 time?
19 A. I did.
20 Q. And what was your contact with her?
21 A. Ms. Vecchio was assisting to
22 coordinate some of the operations.
23 Q. And did you understand her to be a
24 Barclays employee?
25 A. Yes.

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2 Trustee authorize the transfer of PIM Plant
3 Securities from LBI's 074 box to Barclays 229 box?
4 A. I do not see the word "box," but I
5 understand it to be a request to move PIM customer
6 assets from LBI's participant account 074 to
7 Barclays' participant account.
8 Q. Take a look at the next e-mail in
9 the chain.
10 Does that indicate to you that at
11 about 13 minutes after receiving that request that
12 you forwarded that e-mail, along with the
13 Trustee's authorization, to the DTCC?
14 A. Yes. This shows that I forwarded
15 it to various attorneys and operations personnel
16 at DTCC with the Trustee's authorization.
17 Q. How did you decide it was
18 appropriate to authorize that transfer?
19 A. This transfer in particular had
20 been discussed offline and in very close detail
21 with Mr. Borzi and Mr. Ullman, so I was expecting
22 it.
23 And also, it had the appropriate
24 language from Mr. Borzi to me, stating that it was
25 customer assets going to Barclays, and that the

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2 Q. A former Lehman person who became a
3 Barclays employee effective with the closing.
4 Is that your understanding?
5 A. That was -- my understanding is
6 that she was -- that that was her position, yes.
7 (Exhibit 669-B marked for
8 identification.)
9 MR. SHAW: I'm showing you what's
10 been marked as Exhibit 669-B.
11 Q. Take a moment to look at it and
12 then tell me if you recognize this as a
13 September 26th, 2008, e-mail chain, parts of which
14 you wrote and parts of which were addressed to
15 you.
16 A. What was your question?
17 Q. Sure. Do you recognize this as a
18 September 26th, 2008, e-mail -- or e-mail chain,
19 rather, parts of which you wrote and parts of
20 which -- of which were addressed to you?
21 A. Yes, I do recognize it as that.
22 Q. Okay. If you take a look at the
23 earliest e-mail in the chain, that is, the first
24 chronologically, do you recognize that as an
25 e-mail to you from Mr. Borzi, requesting that the

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2 PIM business was the business of -- that I had
3 known Barclays to have acquired.
4 Q. When we talk about customer assets,
5 there were PIM customer assets, there were PAM
6 customer assets, P-A-M, and there were Prime
7 Brokerage assets. Is that correct?
8 A. Those are some of the classes of
9 assets.
10 Q. Okay. What other customer assets
11 were you involved -- what other classes of
12 customer assets were you involved in transferring
13 during that period of time?
14 A. We only would have done PIM and
15 PAM, and PB didn't actually start until October.
16 Q. Okay. So when you talk about
17 customer assets, at least in that time period,
18 you're talking about the PIM and the PAM assets?
19 A. That's correct.
20 Q. Take a look at the most recent
21 e-mail in the string on Exhibit 669-B. You
22 thanked Mr. Borzi for the clarity and precision of
23 his instructing e-mail.
24 What specifically were you
25 commenting on?

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2 A. Mr. Borzi had included references
3 that I had specifically asked him to include, such
4 as which participant account number it was going
5 to, that it was related to PIM clients and
6 customers. That's it.

7 Q. And so it was important to you that
8 Mr. Borzi specify that the assets to be
9 transferred were PIM customer assets. Is that
10 right?

11 A. Yes, and that they were being
12 transferred in connection with Barclays' purchase
13 of the PIM customers under --

14 Q. Okay. And if I understand you
15 correctly, when transfers of customer assets were
16 requested, you required that the assets be
17 identified as customer assets. Is that right?

18 A. Well, my understanding was that
19 only customer assets were being transferred.

20 Q. Where did you get that
21 understanding from, sir?

22 A. That's what I understood the
23 transaction to include. And certainly that's all
24 I understood to be going on in those first couple
25 of weeks.

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2 A. Based on the information and the
3 representation from the Lehman/Barclays employee.

4 Q. In connection with any request for
5 the transfer of assets, was anyone from Barclays
6 ever dishonest with you?

7 MR. ROTHMAN: Objection to the
8 form.

9 A. Was anyone ever dishonest with me?

10 Q. Do you believe that anyone from
11 Barclays ever lied to you or attempted to mislead
12 you about the transfer of any assets?

13 MR. ROTHMAN: Same objection.

14 A. I would have always understood them
15 to be asking that I transfer customer assets.

16 Q. That's not responsive to my
17 question, sir.

18 My question was: In connection
19 with any requests for transfers of assets, do you
20 believe that anyone from Barclays was ever
21 dishonest with you?

22 MR. ROTHMAN: Same objection.

23 A. No.

24 Q. Did you communicate with Alastair
25 Blackwell concerning any asset transfers during

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2 Q. Did you consult on the transfers of
3 any assets with more senior attorneys at Hughes
4 Hubbard & Reed or other representatives of the
5 Trustee?

6 A. Yes.

7 Q. With whom did you consult during
8 that period of time?

9 A. Mr. Kobak, Mr. Kiplok.

10 Q. Anyone else?

11 A. At Hughes Hubbard?

12 Q. At Hughes Hubbard or anyone else
13 representing the Trustee.

14 A. No.

15 Q. To the best of your recollection,
16 did requests that you authorize the transfer of
17 customer assets always specify that the assets in
18 question were customer assets?

19 A. Requests to me?

20 Q. Yes.

21 A. No, they very often did not, and I
22 wouldn't approve them.

23 Q. Okay. How did -- when you received
24 such a request, how did you verify that the assets
25 requested were actually customer assets?

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2 September 2008?

3 A. I did.

4 Q. Who was Mr. Blackwell, sir?

5 Or who -- rather, who did you
6 understand Mr. Blackwell to be?

7 A. I understood Mr. Blackwell to be
8 the head of global operations of Barclays.

9 Q. A former Lehmanite?

10 A. I actually wasn't clear on that.

11 Q. How many times did you discuss the
12 transfer of assets with Mr. Blackwell in September
13 2008?

14 A. It's hard to say when in
15 September -- you know, a number of times.

16 Q. Tell me about any specific
17 discussions you recall having with Mr. Blackwell
18 about the transfer of assets.

19 A. I recall a specific discussion the
20 first week after the closing with Mr. Blackwell.

21 Q. One discussion or more than one
22 discussion?

23 A. One discussion with him in his
24 office, or an office he was using, followed up by
25 some phone calls.

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Q. So was this in Jersey City?

A. This was in Jersey City.

Q. Do you recall when during the week your discussion with Mr. Blackwell took place?

A. I think that it must have been a Thursday.

Q. Thursday the --

A. It should have been the 25th.

Q. The 25th.

Tell me everything you remember about that discussion.

A. Mr. Blackwell and I discussed the customer transfers that were ongoing and that we were in the process of completing for PIM and PAM. We discussed some other customer transactions and that there was an additional transfer of assets that needed to occur that valued around \$1 billion.

Q. And what did you understand that \$1 billion in assets to be?

A. I don't recall what he said it was.

Q. Well, do you recall what you thought it was?

A. No.

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Q. Do you do it daily?

A. I keep daily track of my time. I sometimes catch up at the end of the week.

Q. Was that true in September of 2008 that you were keeping daily track of your time?

A. Yes.

Q. Is it fair to say that you attempted to record your time accurately?

A. Yes.

Q. And that's at least in part because you understood that your time entries would ultimately be submitted to the Court in connection with Hughes Hubbard's fee submission. Is that correct?

A. That is correct.

(Exhibit 670-B marked for identification.)

MR. SHAW: I'm showing you what has been marked as Exhibit 670-B. I will represent to you that this is an excerpt from a much larger document submitted by Hughes Hubbard & Reed in connection with its request for fees for the period from September 13, 2008, through January 31st, 2009.

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Q. How long did that discussion in an office in Jersey City last?

A. Around half an hour probably.

Q. Can you recall anything else about the discussion?

A. No.

Q. Can you recall anything else about the approximately \$1 billion in other assets that you discussed with Mr. Blackwell?

A. He never asked me to transfer it.

Q. What did he ask you?

A. He asked me what steps would be necessary to transfer it.

And I said I would get back to him.

Q. And did you get back to him?

A. I did.

Q. And what did you tell him?

A. I drafted him a representation from him that the assets were appropriate to transfer, and he never responded.

Q. Did you record your time on this case?

A. As a matter of course, I record my time.

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Q. Are you aware that such a submission was made?

A. I am aware of that submission, yes.

MR. ROTHMAN: Just for the record, it's a three-page document. The first page appears to be a cover page, and then it has pages 46 and 47.

Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document.

Do you recognize that as a description of your time for September 24th, 2008?

A. Yes, I do recognize it as that.

Q. And do you believe that that time is -- that is recorded there -- or that the entry that's recorded there is as you wrote it?

A. I have no reason to believe it's not.

Q. Do you have any reason to believe that that entry is inaccurate?

A. No, I do not.

Q. The first part of that entry discusses the PAM customer accounts. Is that correct?

17 (Pages 62 to 65)

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Q. And when I say "part," I'm referring to the segments that end with a number in parentheses and a semicolon.

A. Yeah. The first part of the entry that ends with a number on page 47 is with respect to PAM transfers.

Q. And what were the PAM customer accounts?

A. The PAM customer accounts were the private asset management customer accounts that were transferred to Ridge as the new broker-dealer for Neuberger Berman.

Q. And if you look at the second and third portions of the entry for that date, you'll see that they talk about PIM transfers. Is that correct?

A. That is correct. They do talk about PIM transfers.

Q. Okay. And what did you mean by "PIM transfers"?

A. PIM transfers was the private investment management business of Lehman Brothers, Inc. that was purchased by Barclays.

Q. And then the fourth section talks

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about what appears to be a three-hour discussion with David Aronow concerning PB accounts.

What did you mean by "PB accounts"?

A. Those were the prime brokerage accounts.

Q. And what did you talk about with Mr. Aronow about the transfer of prime brokerage accounts?

A. We had been discussing in the -- in the course of the day how to gather assets related to customers to effectuate their transfer to a new broker-dealer.

Most of the PIM customers were relatively simple accounts. PB accounts hold a lot of other financial products and have more complicated trading arrangements. We were trying to figure out a way operationally to move those accounts and their assets.

Q. And then the final section of your time entry talks about a discussion with A. Blackwell Re: Transfer of other LBI assets in relation to asset purchase agreement. Is that correct?

A. That is correct.

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Q. And when you wrote about other assets, you're referring to the \$1 billion of other assets that Mr. Blackwell had discussed with you?

A. Yes. It appears that conversation was on the 24th.

Q. And when you write "other" assets, that's to distinguish it from the PAM, PIM and prime brokerage assets that are discussed in earlier sections of your time entry. Is that correct?

A. Yes.

Q. Does this refresh your recollection that what you discussed with Mr. Blackwell is the transfer of the remaining clearance box assets pursuant to the clarification letter?

MR. ROTHMAN: Objection to the form.

A. This is -- reflects my recollection that Mr. Blackwell was requesting assets -- requesting transfer of non-customer assets.

Q. And the assets he was requesting were assets in the 636 and 074 box. Is that correct?

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A. He did not disclose to me which assets they were; only their value.

Q. Now having read your time entry for the 24th, do you have any further recollection of your conversation with Mr. Blackwell on this topic?

A. Nothing further to what was just discussed.

Q. And after your discussion with Mr. Blackwell, what did you do with respect to his request concerning the transfer of those assets?

MR. ROTHMAN: Object -- go ahead.

Objection. Asked and answered.

You can answer again.

A. I contacted other -- I contacted other attorneys at Hughes Hubbard.

Q. And who specifically did you contact?

A. Mr. Kobak, Mr. Kiplok.
(Exhibit 671-B marked for identification.)

Q. If you would look at what has been marked as Exhibit 671-B.

Have you had a chance to look at

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2 it?
3 A. I have reviewed this document, yes.
4 Q. Do you recognize that as an e-mail
5 that you wrote to Mr. Blackwell on the 25th of
6 September, 2008?
7 A. Yes, I do.
8 Q. And you copied Mr. Giddens,
9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that
10 correct?
11 A. That's correct.
12 Q. And why did you copy them
13 particularly?
14 A. I copied my supervisors on a
15 regular basis.
16 Q. Okay. And you had discussed this
17 issue between your conversation with
18 Mr. Blackwell -- strike that.
19 Between your conversation with
20 Mr. Blackwell on the 24th and the time you sent
21 this e-mail on the 25th, you had discussed this
22 with at least Mr. Kobak and Mr. Kiplok. Is that
23 right?
24 A. That's correct.
25 Q. Had you run a draft of this past

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2 Q. And when you say "discussed
3 earlier," you're referring to the discussions
4 shown on your time records for the 24th. Right?
5 A. Yes, that's correct.
6 Q. And why did you need that letter?
7 A. Because he had stated that they
8 were due as part of the asset purchase agreement,
9 and we were going to be basing that movement on
10 his representation.
11 Q. And you didn't request a similar
12 letter when Mr. Borzi asked you to authorize
13 transfer of pending client securities; did you?
14 A. No.
15 Q. Why did you request a letter from
16 Mr. Blackwell in connection with the transfer you
17 discussed with him, but didn't request a similar
18 letter from Mr. Borzi in connection with the
19 earlier transfer we looked at?
20 MR. ROTHMAN: Objection to the
21 form.
22 A. The nature of the transfer was
23 different.
24 Q. In what -- I'm sorry. Go ahead.
25 A. The customer transfers had been

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2 them?
3 MR. ROTHMAN: I'm going to instruct
4 him not to answer that question. I think
5 you're getting into the privilege.
6 Q. Attached to this e-mail is a letter
7 that you sent to Mr. Blackwell which he would need
8 to submit before the Trustee would:
9 "... authorize the movement of the
10 positions discussed earlier that are due as part
11 of the LBI/Barclays transaction."
12 Is that right?
13 A. It says:
14 "... which were sold to Barclays
15 Capital pursuant to the asset purchase."
16 Q. I was actually quoting from your
17 e-mail. Sorry. I asked a confusing question.
18 Let me start again.
19 You sent Mr. Blackwell a letter
20 that he needed to submit before the Trustee would:
21 "... authorize the movement of the
22 positions discussed earlier that are due as part
23 of the LBI/Barclays transaction."
24 Is that correct?
25 A. That's correct.

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2 discussed between me and Mr. Borzi, Mr. Ullman and
3 Mr. Gallagher. The file had been discussed.
4 Mr. Blackwell had brought me into a
5 separate room to discuss this, closed the door,
6 and represented these were certain accounts that
7 they needed to have transferred -- certain assets.
8 Pardon me.
9 Q. You say he took you into a separate
10 room and closed the door.
11 You mean the two of you went and
12 sat at a desk in an office?
13 A. Yeah. We went into his office.
14 Q. Okay. And did you attach any
15 significance to his closing the door?
16 A. Most of the discussions I had had
17 regarding transfer of customer assets had been on
18 the operations floor with, you know, ten or 15
19 people who were on the team working on it.
20 Q. Take a look at the draft letter
21 attached to 671-B, the attachment.
22 In that letter you ask
23 Mr. Blackwell to confirm that the requested assets
24 were:
25 "... assets of Lehman Brothers,

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2 Inc. which were sold to Barclays Capital, Inc.
3 pursuant to the asset purchase agreement dated as
4 of September 16, 2008, as amended."

5 Right?

6 A. That's a correct reading of the
7 letter -- draft of the letter.

8 Q. And beyond just a correct reading
9 of the letter, that was, in fact, what you were
10 asking him to do. Right?

11 A. I was, in fact, asking him to
12 represent that these were assets under the APA.

13 Q. And you understood that they were
14 proprietary assets of LBI, not customer assets.
15 Right?

16 MR. ROTHMAN: Objection to the
17 form.

18 A. I understood them to not be
19 customer assets.

20 (Exhibit 672-B marked for
21 identification.)

22 Q. Have you had a chance to read
23 through Exhibit 672-B?

24 A. I have. Thank you.

25 Q. And do you recognize that as an

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2 e-mail string that was sent to you by Neal Ullman
3 at 4:19 p.m. on Friday, September 26, 2008?

4 A. I do recognize it to be that, yes.

5 Q. And that string was about the
6 transfer of approximately \$269 million in
7 collateral from the 636 box at DTC to Barclays.
8 Is that correct?

9 A. Yes, it appears to discuss that
10 transfer.

11 Q. And in the most recent e-mail in
12 that string, Mr. Ullman says to you:

13 "Be over in a minute."

14 Right?

15 A. That's correct.

16 Q. Okay. Did he, in fact, come over
17 to your office to discuss that transfer?

18 A. I can't recall.

19 Q. Were you physically located near
20 Mr. Ullman during this period of time?

21 A. We were on the same floor of the
22 building. He was 100 yards away and around the
23 corner.

24 Q. Do you remember ever discussing
25 this request with Mr. Ullman?

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2 A. No, I do not.

3 Q. Do you remember ever discussing
4 this request with Ms. Vecchio?

5 A. No, I do not.

6 Q. Do you remember ever discussing
7 this request with anyone?

8 A. Then, no -- well, this wouldn't
9 have been sufficient for me.

10 MR. ROTHMAN: That wasn't the
11 question he asked you.

12 Q. Why would this not have been
13 sufficient for you?

14 A. It didn't contain an instruction.

15 Q. What do you mean by "didn't contain
16 an instruction"?

17 A. It says:

18 "Be over in a minute."

19 There's no instruction of what to
20 do with it.

21 Q. Are you aware that you had six
22 minutes earlier actually already sent the
23 instruction and authorization to the DTC on this
24 transaction -- for this transfer, rather?

25 A. No.

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2 Q. Would it surprise you to learn
3 that?

4 MR. ROTHMAN: Objection to the
5 form.

6 A. Would it surprise me now?

7 Q. Yes.

8 A. Yes.

9 Q. Did you understand the
10 approximately \$269 million in securities
11 referenced in this e-mail string to be a portion
12 of the assets that Mr. Blackwell had discussed
13 with you a couple of days earlier?

14 MR. ROTHMAN: Objection to the
15 form.

16 A. No, I did not know what these
17 assets were, and I did not know them to be related
18 to the conversation I'd had with Mr. Blackwell.

19 Q. Do you see anywhere on here any
20 indication that these are customer assets?

21 MR. ROTHMAN: Objection to the
22 form.

23 A. No.

24 Q. Take a look at the earliest e-mail
25 in this string. That's an e-mail from Monty

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2 Forrest to Mister -- to Mr. Blackwell.
3 Do you see that?
4 A. I do see that, yes.
5 Q. Okay. And if you look at the last
6 sentence of the first paragraph of that e-mail,
7 you see that Mr. Forrest writes that:
8 "The list has changed a bit since
9 this morning as Paolo asked to take out the very
10 small pieces (under \$10)."
11 Do you see that?
12 A. I do see that sentence, yes.
13 Q. Would it have been acceptable to
14 leave behind even small pieces if these were, in
15 fact, customer assets?
16 MR. ROTHMAN: Objection to the
17 form.
18 A. In the course of transferring
19 customer assets we did many transfers, some of
20 which were to catch up on transfers that had been
21 left out in the initial files.
22 Q. Can you think of any reason why, if
23 you were transferring customer assets, you would
24 exclude small portions of the customer assets --
25 MR. ROTHMAN: Objection to --

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2 later, so they were not always included in the
3 initial files.
4 Q. Not quite what I was asking, or at
5 least may not what I intended to ask. Let me try
6 it again.
7 Can you think of any other
8 transaction where small amounts of securities were
9 deliberately excluded from a planned transfer of
10 customer assets?
11 MR. ROTHMAN: Objection to the
12 form.
13 A. No.
14 THE VIDEOGRAPHER: The time is
15 11:27. We are going off the record.
16 (Recess taken.)
17 THE VIDEOGRAPHER: The time is
18 11:36. We are back on the record.
19 (Exhibit 673-B marked for
20 identification.)
21 Q. Have you had a chance to look at
22 Exhibit 673-B?
23 A. I have, thank you.
24 Q. And do you see this is an e-mail
25 from you to various people at the DTCC, copying

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2 Q. -- from a particular customer
3 account?
4 MR. ROTHMAN: Objection to the
5 form.
6 A. DTCC is a complicated place. They
7 were doing the operations for us. We were trying
8 to get a bulk of the assets across. We wouldn't
9 have wanted to gum up their systems with small
10 transfers.
11 Q. Is that just your speculation now,
12 or do you have any recollection of thinking that
13 at the time?
14 A. That's my understanding of how the
15 transfers were effected.
16 Q. Can you think of any other
17 transfers where small pieces of the -- of the
18 accounts to be transferred were excluded from the
19 transfer of DTC?
20 MR. ROTHMAN: Objection to the
21 form. It assumes facts not in evidence.
22 Q. You can answer.
23 A. As a matter of fact, I know that,
24 you know, over the course of doing these transfers
25 the smaller bits of securities had to be cut up

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2 Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok,
3 among others?
4 A. Yes, that's correct.
5 Q. And this was an e-mail that you
6 sent at 4:13 p.m. on Friday the 26th of September,
7 2008?
8 A. That's correct.
9 Q. And you were authorizing on
10 behalf of the -- strike that.
11 And you were transmitting to the
12 DTCC the Trustee's authorization of the transfer
13 of approximately \$269 million in securities. Is
14 that correct?
15 A. There's no dollar figure.
16 Q. If you'd take a look at the bottom
17 of the first attachment.
18 A. 269 units, yes.
19 Q. And you think it's units, not
20 dollars?
21 A. It doesn't say dollars. A lot of
22 times they transferred numbers of shares.
23 Q. Do you know whether that's the
24 same -- strike that.
25 Do you know whether this is the

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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 "Lehman Market Value" it has a sum of</p> <p>3 \$269,921,368.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. Does this refresh your recollection</p> <p>7 that the amount of the transfer you authorized --</p> <p>8 or strike that.</p> <p>9 Does this refresh your recollection</p> <p>10 that the amount of the transfer authorized in</p> <p>11 Exhibit 673-B was, in fact, \$269 million?</p> <p>12 MR. ROTHMAN: Objection to the</p> <p>13 form.</p> <p>14 A. The authorization from Mr. Kiplok</p> <p>15 doesn't state a value.</p> <p>16 Q. Well, if you look at the chart that</p> <p>17 immediately precedes the authorization by</p> <p>18 Mr. Kiplok, you'll see it contains almost the same</p> <p>19 number. It's off by, it looks like, about \$20 as</p> <p>20 the one attached to Exhibit 674-B that we looked</p> <p>21 at a moment ago.</p> <p>22 A. Yes, I see that the numbers are</p> <p>23 approximate and that the attachment on 674-B</p> <p>24 contains two additional lines.</p> <p>25 Q. Those being the lines:</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 "Schultz Securities and securities</p> <p>3 delivered."</p> <p>4 Is that what you're referring to?</p> <p>5 A. Yes.</p> <p>6 Q. Looking at the -- at</p> <p>7 Exhibit 674-B --</p> <p>8 A. Yes.</p> <p>9 Q. -- does that refresh your</p> <p>10 recollection that you were informed by Mr. Fleming</p> <p>11 on the 29th that a transfer of \$269 million in</p> <p>12 securities had taken place?</p> <p>13 MR. ROTHMAN: Objection to the</p> <p>14 form.</p> <p>15 MR. SHAW: You can answer.</p> <p>16 A. By Mr. Fleming?</p> <p>17 Q. Yes.</p> <p>18 A. I don't recall that.</p> <p>19 Q. Well, you note that Mister -- it</p> <p>20 says "Dan" -- this is an e-mail from Mr. Tonucci</p> <p>21 to Mr. Fleming, copying Mr. Marsal.</p> <p>22 Do you see where it says "Dan" --</p> <p>23 this is an e-mail from Mr. Tonucci to Mr. Fleming.</p> <p>24 "Dan, can you advise the SIPC team</p> <p>25 with this transfer of assets that's been</p>
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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 completed."</p> <p>3 A. That is what's written.</p> <p>4 Q. Okay. And do you remember</p> <p>5 Mr. Fleming ever advising any members of the SIPC</p> <p>6 team that it had been completed?</p> <p>7 A. I have no recollection of that.</p> <p>8 MR. SHAW: You can put 674-B aside.</p> <p>9 (Exhibit 675-B marked for</p> <p>10 identification.)</p> <p>11 MR. SHAW: Take a moment to read</p> <p>12 what's now been marked as Exhibit 675-B,</p> <p>13 please.</p> <p>14 Q. Have you had a chance to read</p> <p>15 through that?</p> <p>16 A. I have.</p> <p>17 Q. Do you recognize that as an e-mail</p> <p>18 string between you and Mr. Ullman, dated</p> <p>19 September 29th, 2008?</p> <p>20 A. I do, yes.</p> <p>21 Q. If you'd look at the most -- at</p> <p>22 the -- sorry -- at the oldest e-mail in the string</p> <p>23 at the bottom of the first page. It says:</p> <p>24 "Anson, I am seeking authorization</p> <p>25 to transfer the securities in the attached</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 spreadsheets as part of the transfer of assets to</p> <p>3 Barclays Capital."</p> <p>4 Do you see that?</p> <p>5 A. I do see that.</p> <p>6 Q. And then it attaches two worksheets</p> <p>7 which are not attached to this exhibit.</p> <p>8 Do you see that?</p> <p>9 A. I do see that.</p> <p>10 Q. Do you recall this transfer?</p> <p>11 A. No.</p> <p>12 Q. Do you know why this is headed</p> <p>13 forward resending?</p> <p>14 A. No.</p> <p>15 Q. Take a look at the second e-mail in</p> <p>16 the string. You see that your response to</p> <p>17 Mr. Ullman was that you asked him to confirm that:</p> <p>18 "... the attachments to the e-mail</p> <p>19 below represent assets of Lehman Brothers, Inc.</p> <p>20 that were sold to Barclays Capital, Inc. pursuant</p> <p>21 to the Asset Purchase Agreement dated as of</p> <p>22 September 16, 2008."</p> <p>23 Do you see that?</p> <p>24 A. I see that, yes.</p> <p>25 Q. Okay. That is substantially the</p>

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2 same as the representation that you asked
3 Mr. Blackwell to make in the draft letter that you
4 e-mailed to him a few days earlier. Is that
5 right?

6 MR. ROTHMAN: Objection to the
7 form.

8 A. I communicated with Mr. Ullman and
9 Mister -- and Mr. Blackwell on different subjects.

10 Q. That's not my question, sir.
11 My question is: The confirmation
12 you were seeking from Mr. Ullman with respect to
13 these transfers was substantially the same as the
14 confirmation you sought from Mr. Blackwell in the
15 letter that you -- in the draft letter that you
16 sent him on the 25th?

17 MR. ROTHMAN: Same objection.

18 Q. Is that correct?

19 A. It does seem similar, yes.

20 Q. Okay. And now -- because you
21 understood that what Mr. Ullman was asking you to
22 transfer were non-customer assets, just as the
23 ones Mr. Blackwell had discussed with you earlier.
24 Right?

25 A. No. I only understood Mr. Ullman

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2 to be requesting transfer of customer securities.

3 Q. Then why are you asking for this
4 confirmation?

5 A. I asked for confirmation that the
6 assets being transferred were appropriate for
7 transfer every time I made a transfer.

8 Q. Okay. You didn't ask him to
9 confirm that these were customer assets. Right?

10 A. My understanding with Mr. Ullman is
11 that we were transferring customer assets.

12 Q. That's not my question, sir.

13 My question is: You did not ask --
14 you did not ask him to confirm that these were
15 customer assets being transferred. Right?

16 MR. ROTHMAN: Objection. Asked and
17 answered.

18 Q. You can answer.

19 A. I asked him to -- no.

20 Q. And you previously stated that --
21 strike that.

22 And Mr. Ullman confirmed at about
23 3:50 p.m. on the 29th that what you had asked him
24 to confirm was correct. Is that right?

25 A. Yes.

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2 MR. SHAW: Showing you what's been
3 previously marked as Exhibit 449 in this case.

4 Q. Do you recognize that as an e-mail
5 that you sent to various personnel at the DTCC and
6 copied to Mr. Kobak, Mr. Ullman, Ms. Vecchio and
7 Mr. Gallagher on the 29th of September, 2008, at
8 approximately 3:52 p.m.?

9 A. Yes.

10 Q. And do you understand that to be
11 you're transmitting the authorization that
12 Mr. Ullman was requesting you to transmit in
13 Exhibit 675-B?

14 A. Yes, I do.

15 Q. And you did that without any
16 confirmation that these were customer assets. Is
17 that correct?

18 A. I transferred them as -- in
19 connection with the Asset Purchase Agreement,
20 which I understood to effect the transfer of
21 customer assets.

22 Q. You'd also had a discussion with
23 Mr. Blackwell a few days earlier where you had
24 discussed with him a billion dollars of other
25 assets that were -- that were to be transferred

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2 pursuant to the Asset Purchase Agreement. Isn't
3 that correct?

4 A. I had asked Mr. Blackwell at that
5 time to transmit to me a file and a signed letter
6 from him that those assets were being transferred,
7 not Mr. Ullman.

8 MR. SHAW: Move to strike as
9 nonresponsive.

10 Q. My question, sir, was: And you'd
11 had a conversation with Mr. Blackwell a few days
12 earlier about a billion dollars of other assets.
13 Correct?

14 MR. ROTHMAN: Objection to the
15 form.

16 You can answer.

17 A. I had had a conversation with
18 Mr. Blackwell about the transfer of other assets.

19 Q. Yes. And those other assets were
20 assets that you understood were conveyed under the
21 Asset Purchase Agreement. Correct?

22 A. I was asking him to represent that
23 they were conveyed under the Asset Purchase
24 Agreement.

25 Q. Yes. But you understood that the

24 (Pages 90 to 93)

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2 Asset Purchase Agreement dealt with things other
3 than customer assets. Correct?

4 MR. ROTHMAN: Objection to the
5 form.

6 A. I was asking him to make that
7 representation.

8 Q. And you were asking Mr. Ullman --
9 going back to Exhibit 675-B, you were asking
10 Mr. Ullman to make that same representation in
11 connection with these two transfers. Correct?

12 MR. ROTHMAN: Objection to the
13 form.

14 A. I asked Mr. Ullman to confirm that
15 we were transferring customer assets in connection
16 with the APA.

17 Q. Where does -- where do you see the
18 words "confirm that these were customer assets"?

19 A. My normal course of dealing with
20 Mr. Ullman was with customer assets.

21 Q. Okay. But you did not ask
22 Mr. Ullman to confirm that these were, in fact,
23 customer assets; did you?

24 MR. ROTHMAN: Objection to the
25 form. He just said that he did.

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2 Q. Can you show me where on this -- on
3 Exhibit 675-B you asked Mr. Ullman to confirm that
4 these were customer assets.

5 A. I asked that they were being
6 transferred pursuant to the Asset Purchase
7 Agreement, which I understood to transfer customer
8 assets.

9 Q. And which you also understood to
10 transfer non-customer assets. Right?

11 A. I had asked other personnel to
12 inform me or to represent to me that it
13 transferred other assets.

14 Q. So you were asking Mr. Blackwell to
15 give you legal advice on what the Asset Purchase
16 Agreement transferred?

17 MR. ROTHMAN: Objection to the
18 form.

19 A. Representation is not legal advice.

20 MR. SHAW: Let's take a five-minute
21 break. I may be done. I just want to look at
22 a couple of things.

23 THE VIDEOGRAPHER: The time is
24 11:58. We are going off the record.

25 (Recess taken.)

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2 THE VIDEOGRAPHER: The time is
3 12:03. We are back on the record.

4 MR. SHAW: Mr. Frelinghuysen, I
5 have no further questions for you at this
6 time. Thank you very much.

7 THE WITNESS: Thank you.
8 EXAMINATION BY

9 MR. ROTHMAN:

10 Q. I'd like to just clarify one thing
11 with you, if I may, Mr. Frelinghuysen.

12 Do you recall telling Mr. Shaw that
13 you saw a draft of the clarification letter on
14 Monday morning, the 23rd or 22nd?

15 A. 22nd.

16 Q. And you assumed that that was the
17 final version?

18 A. Yes.

19 Q. When did you see that draft?

20 A. I saw that draft around 6:00 a.m.

21 Q. And why did you assume it was the
22 final version?

23 A. We stopped talking about the
24 clarification letter at that point.

25 Q. Did you get any further drafts of

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2 the clarification after 6:00 that morning?

3 A. I don't recall receiving or seeing
4 any further drafts of the clarification letter
5 that morning.

6 Q. Do you know if the draft that you
7 got at 6:00 a.m. that morning is the same as the
8 exhibit that you've been shown here today?

9 A. I do not know that.

10 MR. ROTHMAN: That's all I have.

11 MR. SHAW: Just one question

12 following up on that.

13 EXAMINATION BY

14 MR. SHAW:

15 Q. Mr. Rothman asked you if you got
16 any further drafts of the clarification letter
17 after 6:00 that morning, and you said no.

18 Were you speaking only for
19 yourself, or were you purporting to speak for
20 the -- for any representative of the Trustee --
21 let me -- let me take that question out and shoot
22 it and start again.

23 When Mr. Rothman asked you if you
24 recalled receiving any further drafts of the
25 clarification letter after 6:00 that morning, and